

1630. November 27. CAIRNCROSS *against* Laird LOUDON.

No 407.

CAIRNCROSS of Cunoshie pursues Laird Loudon for a certain sum contained in a contract of marriage registered more than 40 years ago, which the LORDS found to be prescribed, notwithstanding of the registration thereof.

*Auchinleck, MS. p. 163.*

1635. June 26. L. of WAUCHTON *against* HUME of Ford.

No 408.

In a thirlage of *omnia grana crescentia* established by writ, it was found that the defender having grinded a part of his corns at the mill to which he was thirled, this was sufficient to sustain the astringion for the whole, though there was a desuetude for the rest above the space of 40 years.

IN an action for abstracting of thirle-multure, the ground whereof was a charter granted by the umquhile Lord Holyroodhouse to umquhile William Lermouth of Hill, whereby he thirled his lands of Ford and others particularly therein designed, to the said William Lermouth's mill of Linton, and also all the corns in-brought by the possessors of the said lands which should happen to be grinded by them; this was the tenor of the astringion, the right whereof being come in the Laird Wauchton's person, and he pursuing therefor, and the defenders compearing to defend, it was found by the LORDS that the astringion, albeit of the tenor foresaid, whereby the lands were thirled to the mill, albeit not bearing *omnia grana crescentia in dictis terris*, to be thirled; and albeit also bearing in the subsequent clause, (*viz.* and sicklike the corns in-brought which should happen to be ground there) did extend to oblige the tenants and possessors of the lands to pay the multures acclaimed for the whole corns which should grow upon the said lands, as well for the corns that should be ground at other mills than the mill of the astringion libelled, as for the whole other corns growing thereon which should be ground any where; and found, that the said subjoined clause, *viz.* anent the corns which should happen to be ground, did extend only to the corns in-brought by the tenants, and not to the corns growing upon the lands. And whereas the defender *alleged*, That the astringion did extend only to the corns growing upon the lands for so much thereof as should happen to be ground at any other mill, according to the words and meaning of the said astringion, as said is, and no further, ought to be enlarged to all the corns growing, which should not happen to be ground, as said is, at no other mill; in respect he *alleged* that it was so expressed in the writ and thirlage, being in itself odious and not favourable, it should rather be retrenched than enlarged; for, albeit by the custom of this realm, parties by express paction may thirle all their corns growing, *quo casu* such thirlage being so particularly and *specificce* convened upon, the same may have effect; but where the paction does not *specificce* comprehend the same, it ought not to be extended; for it were against equity and reason, that multures should be kept for corns not ground, *nisi sit ita conventum*; likeas of the common law, all these astringions are instituted and allowed, only that vassals and tenants should come to their over lord's and master's