

after built or re-edified, the creditors having apprised, did take infeftment of the mains by earth and stone, and of the mill by clap and happer; and now in a competition betwixt the Lady and them anent the rents of the mill, it was *alleged* for the Creditors, that they ought to be preferred, because they were infeft in the mill, and the Lady was never infeft therein, albeit her precept of sasine bore an express warrant to infeft her therein by clap and happer. It was *answered* for the Lady, that her infeftment of the land, with the mill and other pertinents, is anterior to the Creditors, and must extend to the mill, albeit she took no special sasine thereof, because there was no standing mill at the time of her sasine; so that the mill being built by her husband thereafter, *solo cedit*, and belongs to her as a pertinent; for though where a mill is before infeftment, it cannot pass as a pertinent without a special sasine, yet where it is only built thereafter, it accresces to any party infeft in the land, especially being infeft in the land, with the mill thereof.

THE LORDS preferred the Lady, she proving the mill at the time of her contract and infeftment was not at all built, or having been built was demolished.

Fol. Dic. v. I. p. 574. Stair, v. I. p. 701.

* * * A similar decision was pronounced, January 1666 Campbell against Stirling No 5. p. 8241. *voce* LIFERENTER; in which case the LORDS declared that if the husband who built the mill did thirle any other lands thereto, besides the liferent lands, the liferenter should have no benefit thereby.

1684. February 28.

M'DOUGAL against M'CULLOCH.

M'DOUGAL of Logan pursues M'Culloch of ———, to demolish a mill he had built within his thirlage. *Alleged, imo*, A mill that has once gone 24 hours cannot be thrown down, *ob favorem alimentorum*. *2do*, Though my lands be thirled to your mill, which is the mill of the barony, yet that cannot hinder me, unless my charter did expressly restrict me, to build a mill within my own lands, especially I having a clause 'cum molendinis et multuris' in the *tenendas*; seeing I am willing to declare that none within your thirlage should grind at my mill, but only others who voluntarily were pleased to come; and that Craig was clear of this opinion, *L. 2. Dieg. 8. Answered*, That the building a mill within his thirle could be interpreted to be done with no other design but *in emulationem vicini*, and that it was tempting those within the sucken to abstract, and go away to that nearer mill; and whatever was Craig's opinion *non refert*: Yet he seems only to mean where one was thirled for a dry multure allenarly, *ad annuam prestationem*, that one so thirled might *in suo molam edificare*. THE LORDS on the report of Lord Boyne, find that the defender ought not to have built a mill upon the thirled lands, and that *inest de jure*,

No 3.

him, and therefore a liferentrix infeft on lands on which a mill was afterwards built by the proprietor, was preferred to a posterior appriser infeft expressly in the mill.

No 4.

Proprietor of thirled lands cannot build a mill within the thirle.

No 4. though he be not expressly restricted and prohibited in his charter; and therefore ordain the said mill to be demolished; but find that the defender is not obliged by the nature of his thirlage to go to the pursuer's wind-mill, but only to his water-mill to which he is thirled; and that notwithstanding of the alleged defects of the mill, find the defender liable for the multure of the abstracted corns, except those that are acknowledged by the pursuer; but find him liable for the hynd bolls; but declare that in case the time of the abstraction, the mill of the barony be not in condition to serve, then find the defender liable for the multure, but not for the small duties due for service.

M'Culloch having reclaimed against this interlocutor; and it being of new reported, how far one might build a mill within another's thirlage, they reviewed the affair, but still adhered to their former interlocutor, on the 13th March 1684. See THIRLAGE.

Fol. Dic. v. 1. p. 574. Fountainball, v. 1. p. 276.

* * * Harscase reports this case :

IN a declarator for demolishing of a mill, as newly built upon thirled lands, in prejudice and emulation of the thirlage,

Alleged for the defender; That he, as *dominus* of his lands, might build a mill thereon for grinding the corns of his other lands that were not thirled, and to serve for out-sucken multure, which is the opinion of Craig, lib. 2. dieg. 8. and the pursuer had no more prejudice by the building of the mill upon the thirled lands, than if it had been erected upon contiguous landsunthirled.

Answered; The thirled lands not being disposed to the defender *cum molendinis*, he ought not to build any mill thereon, to give a colour or occasion for abstracting of multures. And by the custom of baronies, house-mills and querns are always broke.

“ THE LORDS sustained the answer, and decerned the mill to be demolished.”

Harscase, (MULTURES.) No 725. p. 205.

1695. February 28. CRAWFORD of Carsburn against SIR JOHN SHAW.

No 5.
Found in
conformity
with the
above.

THE LORDS determined the controversy betwixt Crawford of Carsburn and Sir John Shaw of Greenock, about the thirlage to Greenock's mill; and they adhered to their former interlocutor, declaring the thirlage in Greenock's favour, notwithstanding the prior resignation and infefment in Carsburn's person, *cum molendinis et multuris*, and the practise cited in 1691, Newbyth *contra* Whitekirk; See THIRLAGE. Then Carsburn insisted on that conclusion of his summons, seeing no more was thirled but his *grana crescentia*, and that he had a