

No 39.

whether the tenants should be any further liable than for what was in their hands the time of the citation, they ordained that to be heard in their own presence.

P. Falconer, No 44. p. 24.

*** Harcarse's report of this case is No 23. p. 10633, Sect. 3. *h. t.*

No 40.

1695. February 19. GRANT of Arndilly against LAW of Newton.

RANKIELER reported Grant of Arndilly *contra* LAW of Newton. THE LORDS found, *imo*, That an infeftment in multures, with seven years possession, gave not the benefit of a possessory judgment, being only a servitude, like an infeftment of annualrent; *2do*, That forty years possession was not sufficient, without some legal compulsitor, unless it were *in molendino regio*. But here they fixed on the contract that had passed betwixt the parties' predecessors in 1619, and decerned conform to the quantities therein contained.

Fol. Dic. v. 2. p. 91. Fountainhall, v. 1. p. 671.

No 41.

1698. January 26. STEWART against GRANT of Elchies.

In a process of abstracted multures, the defender having pleaded a possessory judgment upon a right to his lands *cum molendinis et multuris*, in consequence of which right he had a mill upon his own ground, and did grind his corns there above seven years; it was *answered*, That thirlage is *res incorporea*, no more capable of possession than annualrents or other *debita fundi*.—THE LORDS sustained the possessory judgment.

Fol. Dic. v. 2. p. 91. Fountainhall.

*** See the particulars of this case *voce* THIRLAGE.

1706. July 2.

HEPBURN against ROBERTSON.

No 42.

A tack of teinds held to have the benefit of a possessory judgment, as well as an infeftment, being a real right.

THE prioress of the nunnery of Haddington having set a tack of the teinds of the lands of Garvald and Nunraw to Patrick Hepburn, for sundry liferents and nineteen years, the right of this tack is assigned by Patrick Hepburn of Nunraw to John Hepburn, bailie of Swinton; and he pursuing for these teinds, compearance is made for George Robertson, who had adjudged the tack from Nunraw for his debt, and craved preference, as being seven years in possession by virtue of his adjudication, and so had the benefit of a possessory judgment.