

astricted, for which sum he had purchased an immunity from the astriction, so that the payment was a real diminution of his rent.

Answered: The heritor has thirled his tenants to his own mill, for which he receives so much more rent as makes up the payment of the dry multure.

Replied: If the tenants paid the dry multure themselves, they would pay so much less rent, and notwithstanding behoved to go somewhere to grind, and probably to their master's mill, and what he got for grinding would not be a teindable subject; therefore he taking up in the rent what he pays for the multure, is only to be considered as collecting from the tenants for the multurur, and ought to have deduction thereof.

The estate being in different circumstances, part astricted, and part not, the Lords Commissioners found, That the dry multure payable by the pursuer to the College for the lands which were astricted to his mill, ought not to be deducted from the rental; but found that the dry multure payable for the pursuer's lands, which were not astricted to any mill, ought to be deducted from the rental of these lands.

Act. *W. Grant and G. Sinclair.*

Alt. *Millar.*

D. Falconer, p. 66.

No. 87.
and craving deduction thereof from his rent, was found entitled thereto if he had not thirled his lands to his own mill—otherwise if he had.

1745. February 22.

LANDAL against MELDRUM.

Where the astriction was of *omnia grana crescentia*, it was found, that if, after 48 hours, there be not water to serve the mill, the thirle may go where they will, with as much as is necessary for the use of their families.

It was also found, that the thirle had no right to sell corns, not grinded, for payment of rent or servants fees.

Kilkerran, No. 12. p. 577.

No. 88.
Mill unable to serve the thirle. May grain be sold?

1746. July 18.

WILLIAM MACKIE against The MALTSTERS of FALKIRK.

William Mackie, tacksman of the mills of Falkirk, pursued some of the distillers and maltsters there in a declarator of astriction, and for abstracted multures, in which the Lords, 21st July, 1744, "Having considered the testimonies of witnesses and writs produced, found that the defenders were only astricted to the pursuer's mill as to their *grana crescentia*; and found that the defenders their erecting and using steel mills within the town and barony of Falkirk was unwarrantable."

Each of the parties reclaimed against that part of the interlocutor whereby they thought themselves aggrieved.

The tacksman founded on a charter, 21st September, 1643, in favours of the Earl of Callendar, of the lands and barony of Callendar, comprehending dimidie-

No. 89.
The superior of Falkirk having his charters *cum astrictis multuris ville*, and having granted charters to the feuers with astriction of the *grana crescentia*, it was found on proof to

No. 89.
be an astric-
tion of *invecta*
et illata, and
that the inha-
bitants could
not erect
steel-mills.

tatem villæ et terrarum de Falkirk, cum astrictis multuris totius baroniæ de Calendar, et totius villæ et terrarum de Falkirk; as also on a charter 1606 of the lands and barony of Falkirk, comprehending *terras de Falkirk*, being formerly part of the barony of Abbotskerse then erected into a new barony.

The defenders founded on charters, by the superior to their authors, of certain proportioned parts, in some *terrarum*, and in others *villæ et terrarum de Falkirk*, with astriction of the *grana crescentia* only.

The pursuer contended, That the Town being astricted, this behoved to be understood of the *invecta et illata*; and the clause in the defenders' charter referred only to the lands.

The defenders, That their charters behoved to be the rule, that by them the lands only were astricted, the house being at first intended for the use of the labouring, but, by building other houses for trades-people, the place had grown to its present bulk; and it was an ordinary way of speaking to express villages of farm houses by town and lands, and yet if such were astricted, it would not infer an astriction of *invecta et illata*.

The argument concerning the steel mills proceeded on the supposition of the astriction being only of *grana crescentia*; but this being altered, on consideration of the superior's charter, and the proof, the Lords easily agreed to adhere to that part of the interlocutor.

Cited for the pursuer in this argument, Stair, p. 294. (304.) § "But though," &c. 19th December, 1740, Town of Edinburgh against Mrs. Cleghorn, No. 80. p. 16019.

For the defenders, Craig, L. 2. D. 8. § 8.

Some of the Lords declared they would have been of a different opinion, if the astriction had only been of *grana crescentia*.

The Lords, 9th July, 1744, found the defenders inhabitants of Falkirk thirled and astricted to the mills of the barony, as to the malt only brought in and consumed within the said town; and adhered to the former interlocutor, finding that the defenders their erecting and using steel mills within the town and barony of Falkirk was unwarrantable.

Act. Graham; sen.

Alt. Haldane and W. Grant.

Clerk, Forbes.

D. Falconer, v. 1. p. 165.

1740. January 24.

GRAY and CLARK against RAIT and Others.

No. 90.
Thirlage of
invecta et
illata, what it
compre-
hends?

Where there is a thirlage of *invecta et illata*, it will extend to all corns bought by the inhabitants and grinded within the thirle; but, unless there be an established usage to the contrary, it does not comprehend meal or flour imported by the inhabitants grinded before it is bought.

And accordingly in this case it was found, that the baxters of Perth, the inhabitants whereof are thirled to the town's mills for *invecta et illata*, were not liable