

No. 97. was not another circumstance favourable to the astringency ; no appearance that it was a barony-mill ; no appearance that the lands and mill ever belonged to the same person ; and the thirle multures claimed were extremely moderate.

It holds what is laid down by our authors, that thirlage is not inferred merely from the use of coming to the mill and paying in-town multures ; supposing only the fact which the writers had in view, namely, that the lands and mill belonged to different proprietors. None of these writers apply the maxim to a barony, especially an old barony, neither do they apply it to a case like the present, where along with the lands a mill is disposed "*cum multuris et eorum sequelis.*"

The letters were found orderly proceeded at the Earl's instance, and he was assolizied from the declarator of immunity."

Sel. Dec. No. 54. p. 68.

1755. November 28.

JOHN GRANT, Tacksman of the MILL of RUTHVEN, *against* JAMES MILNE of Bottarie.

No. 98.
No multure is due by a tenant, if his whole farm be kept in grass, and neither he nor his family reside on the grounds astringed.

James Milne was astringed by his tack to the mill of Ruthven, and bound to pay certain multures for all corn, either produced from his farm or brought in for the use of his family.

The representative of Milne being pursued for abstracted multures, objected, That Milne had, during his possession, kept his whole grounds in grass ; and that neither he nor any of his family had resided on the farm, and consequently that no multure could, in terms of his tack, be due.

The Lord Ordinary " assolizied the defender," and the Lords adhered, although it was pleaded for the tacksman of the mill, That multures, when ascertained by custom, and known to the tenant of lands subjected to thirlage, are to be considered as part of the rent ; that a tenant is, from the nature of his tack, supposed to reside on the lands let to him ; and consequently, that such tenant may not diminish this rent, or elude the purposes of his tack, either by converting the whole of his corn-grounds into grass-grounds, or by residing elsewhere than on the lands let to him.

Petitioner, *Miller.*

D.

Fac. Coll. No. 166. p. 248.