

feued the said mill, and so after the Lord Torphichen had let the lands of Rot-tourlaw, without any astriction to the said mill, his Lordship could not astrict them by a sequent feuing of the said mill. To which it was replied, That the exception is not relevant, except the excipient would allege that he or his authors were infest *cum molendinis et multuris*, in respect it was the mill of the whole barony whereto the said lands were astricted before the feu. The Lords repelled the exception, in respect of the reply.

Auchinleck MS. p. 129.

* * See Durie's report of this case, No. 115. p. 10852. *voce* PRESCRIPTION, from which the proposition on the margin is taken; from which likewise it is to be understood, that a feu charter bearing a certain feu-duty *cum omnio alio onere*, without a clause *cum molendinis*, imports not exemption from thirlage.

1629. July 17.

A. against B.

If the tenants abstract corns from the mill whereunto they are thirled, and, when they are pursued for abstracted multures, they offer them to prove that they offered their corns to the mill, and that the mill wanted water; if it be replied, that notwithstanding they made offer of a part of the corns of a certain time of drought, yet, before the time, they abstracted the corns, and ground them at other mills, the exception should be repelled, in respect of the reply.

Auchinleck MS. p. 129.

1631. November 26. MR. WILLIAM OLIPHANT against EARL MARISHAL.

The Earl granting bond to Mr. William, obliging him to infest him in some oxen-gates of his lands, of the barony of Strabrock, and to subscribe a charter of feu-holding, for a certain duty therein mentioned, to be paid therefor allenary, which was also under reversion; and the Earl being charged to give him such a feu-charter, and suspending, upon production of a feu-charter, bearing, "payment of the feu-duty convened on, nomine feudifirmæ tantum pro omni alio onere, demanda, vel servitio, quod de dictis terris exigi poterit;" the Lords found, That this charter satisfied not the tenor of the bond, because the charter bore not a clause therein, *cum molendinis et multuris*, whereby, if the same had been inserted, the receiver might be free of all astriction and thirlage of the lands disposed to the mill of that barony whereof the said lands disposed were a part; for the Lords found, that the bond being of this tenor, obliging the maker thereof to dispose the lands in feu, to be holden of him for payment of a feu-duty allenary, albeit the bond bore no more, neither made mention of mill nor multures; but only proported "the payment of the foresaid feu-duty therefor allenary," ought

No. 20.
about the mill, are implied in every sort of thirlage, and go along to purchasers, tho' not expressed.

No. 21.

No. 22.
A feu-charter bearing a certain feu-duty *pro omnia alio onere*, but with no clause *cum molendinis et multuris*, imports no exemption from thirlage. See Newliston; No. 20. *supra*.

No. 22. to import freedom and liberation of the feuer from all thirlage of these lands to that mill of the barony, either already made before the bond, or to be made any time after the same; and that that word "allenary" ought to produce that effect; and therefore that the charter ought to be made with that clause foresaid, which may import the same: Neither was it respected what the suspender alleged, that this charter was conform to the bond in every point, and that it was not now time to dispute what that clause anent the payment of the feu-duty only appointed to be paid should import; for, seeing the charter bore that clause, it was free to him to claim the extent and effect of that clause, when any question should arise upon any deed contrary or different therefrom, which at this time was not proper to be agitated; notwithstanding whereof, the Lords found, that he ought to have liberation from all thirlage, and that the charter ought to bear a disposition of the lands cum molendinis et multuris, albeit the bond bore nothing of thirlage, mills, nor multures, but only that word, "allenary," as said is.

Act. *Præsens.*Alt. *Nicolson.*Clerk, *Hay.**Durie, p. 603.*

* * See Monteith, 4th December, 1716, *infra, h. t.*

1632. July 13. EARL OF MORTON *against* TENANTS OF MUCKART.

No. 23.

Infestment in a mill *cum astrictis multuris usetat. et consuet.* though the mill was the only one of the barony, was found not sufficient to infer astriction against the tenants of the barony, as the terms *usetat. et consuet.* were relative, and regulated by the practice prior to the infestment.

Durie. Spottiswood.

* * This case is No. 116. p. 10853. *voce* PRESCRIPTION.

No. 24.

1632. November 20.

SIR ALEXANDER HAMILTON *against* MATTHEW HAMILTON.

The clause "cum molendinis et multuris," in the *tenendas* of a charter, with a feu-duty *pro omnia alio onere*, found, in certain circumstances, not to liberate from astriction.

By contract passed betwixt the umquhile Laird of Innerwick and umquhile Alexander Hamilton of Easterneith, *anno* 1572, the Laird is obliged to give a feu infestment of the said land to the said Alexander, who, by his bond, is obliged that he, being infest, shall bring his corns to the mill of Botehaitt, and pay such a multure thereof. Sir Alexander Hamilton, son and heir to the Laird of Innerwick, contractor, pursues Matthew Hamilton, son to the said Alexander of Easterneith, for his abstracted multures. It is excepted, that he is infest by the pursuer in the said lands *cum molendinis et multuris*, without any relation to the said contract,