

Replied for the defender; The feuar of the land having granted a temporary bond of thirlage to the pursuer's author, obliging himself to bring his corns to the mill during his life, these years ought not to come *in computo* to make up prescription, seeing, during that space, the feuar of the land was not at liberty to go elsewhere, and so could not be understood to have voluntarily acquiesced to, or acknowledged the pursuer's posterior right of thirlage. Again, the possession ought to be ascribed to the bond as the proper title, and not to the infestment in the mill: Besides, it is offered to be proved, that the pursuer's author had made use of the bond; and the bond being only a temporary right, could not be a title of prescription.

Duplied for the pursuer; That he denied any such bond was made use of; and *esto* it had, his possession ought to be ascribed to his infestment, which was the more sovereign title; *2do*, The pursuer being a singular successor to the receiver of the bond, and the bond not being transmitted or made over to the pursuer, he had no other title but his infestment to ascribe his possession to.

THE LORDS, before answer, ordained trial to be taken in what way and manner the bond was used, and by which of the pursuer's authors.

Harcarse, (PRESCRIPTION) No 761. p. 215.

1697. February 5.

MUIRHEAD of Braidsholme *against* The FEUARS of UDDINGSTON.

MERSINGTON reported Muirhead of Braidsholme against the Feuars of Uddingston, for abstracting their multures from his mill of Calder. *Alleged*, By their feu charters they are only astricted to a peck of each load of meal, whereas he exacts much more by his multure-dish. *Answered*, His measure is indeed somewhat more than the Linlithgow peck, but it is conform to the Glasgow measure, which is the rule and standard not only in his mill, but in all the mills round the country, and that by which the heritors receive their farms. *Replied*, the Linlithgow measure is the general authorised rule by the acts of Parliament. THE LORDS considering that every mill had its own customs, they found it relevant to augment the quantity, if they proved 40 years peaceable possession, in exacting no less. Then, *2do*, The feuars craved to be free, unless they got the preference to all out-town sucken in grinding their corns, especially seeing they were infest in the mill as well as Braidsholme *quoad* the great multures, and he had only the power of inputting a miller, and uplifting the small duties of the lock, knaveship and bannock; and yet his miller preferred those who were not thirled, at least served them according as they came to the mill, whereby they suffered prejudice both in the time of drought and frost. *Answered*, By the disposition none had a preference but the Earl of Angus, who was their superior; and it was the most equal method to serve them as they came. THE

No 131.

No 132.

Found in conformity to Forbes against Magistrates of Inverness, No 121. p. 10858.

No 132.

LORDS, before answer, allowed a conjunct probation, anent the custom of the mill, as to this privilege. There was also a deduction craved for the seed, horse-corn, and teind, that they might be free of the multure, and that nothing might pay but what they grinded for their own use and consumption within their own houses. But it was remitted to the Ordinary to try if *omnia grana crescentia* were astricted by their infeftments; for there be many various decisions of the Lords upon this point.

Fol. Dic. v. 2. p. 108. Fountainhall, v. 1. p. 764.

No 133.

1727. July 5. Mr JOHN M'LEOD *against* VASSALS of MUIRAVENSIDE.

A SUPERIOR having feued out his barony to his vassals, astricting their *omnia grana crescentia* to the mill of his barony, the vassals, past memory of man, paid multure for the growing corns of all kinds, without any distinction betwixt stock and teind; but at last the vassals conceived that the stock only, and not the teind, (which never belonged to the superior) was included in the aforesaid astriction, they, for that reason, abstracted their teinds, and refused to pay multure for the same. It was *argued*, on the other side, That the words of the astriction carried teinds as well as the other growth of the lands, and therefore should the titular even draw the teinds, *ipsa corpora*, the vassal must be liable in an equivalent of dry multure. THE LORDS found, That the vassals, during the years of prescription, being in use to bring their whole corns growing upon their lands to be grinded at the superior's mill, without demanding any abatement upon account of teind, relevant to include the teind within the astriction. See APPENDIX.

Fol. Dic. v. 2. p. 107.

S E C T. VIII.

Title requisite for a Servitude of Pasturage.

1629. June 25.

SHERIFF of CAVERS *against* TURNBULL.

No 134.
An infeftment
of lands, *cum*
communi pas-
tura, not
found suffi-

IN a removing from the muir called Cavers-muir, the pursuer being infeft in that muir by the King *per expressum*, and the defender being infeft in his lands *cum pascuis et pasturis, cum communi pastura, cum libero introitu et exitu, et cum omnibus libertatibus et pertinentiis dictarum terrarum, by virtue whereof*