

No. 91. but found that the inhabitants of Perth could not buy wheat, and grind it at any other than the Town's mills, and afterwards import it.

Reported by the President, who had been Ordinary.

Act. Lockhart.

Alt. R. Craigie.

Clerk, Justice.

D. Falconer, v. 2. p. 64.

1749. June 14.

ELPHINSTON against LEITH.

No. 92.

Though dry multure is paid for bear, it will also pay multure at grinding.

It often happens that a dry multure is paid for bear; but notwithstanding thereof, if the bear be brought to the mill, it will pay the ordinary multure paid of the oats.

Kilkerran, No. 14. p. 577.

1750. January 4.

HARROWERS of Milnathort against HORN of Shanwell.

No. 93.

A charter from a subject *cum molendinis* in the *tenendas* liberates from astriction.

William and Andrew Harrowers, joint proprietors of the mill of Milnathort, pursued Andrew Horn of Shanwell in a declarator of astriction of his said lands to the said mill; and founded on a charter 1697, from the Lord Burleigh, of the mill, with the multures, &c. of the barony of Burleigh and Shanwell; and the defender insisted on a charter 1540, granting his lands *tenendas cum molendinis, multuris, &c. reddendo* a feu-duty, *pro omni alio onere*.

By the proof it appeared the defender had come to the mill, and paid a less duty than the sucken; and had assisted in repairing the dam and mill-house, part of which was allotted to him; and also that he had gone to other mills.

Pleaded for the pursuers: This is no mill of a barony, which presumes astriction; and the grant, *cum molendinis* in the *tenendas*, has not the effect to liberate the defender's lands, who has come to the mill and paid services; and the abstractions have not been such as to acquire a liberation.

Pleaded for the defender: A grant *cum molendinis*, in a subject's charter, is an effectual liberation; the reason why it is not so in the King's being that the signature goes no further than the word *tenendas*; and the rest is filled up in the charter by the writer: The defender has come to the mill, but has not paid in-town multure; and he has gone to other mills; and the assisting to repair the mill and dams, has been done out of good will, or for some favour granted by the miller.

The Lords found the defender's lands not astricted.

See 28th June, 1751, Russel against Harrowers, *voce* WARRANDICE.

Act. Boswell & Bruce.

Alt. Lockhart and A. Pringle.

D. Falconer, v. 2. p. 132.