

1750. *November 17.* URQUHART *against* TULLOCH.

The question was stated in a bill of suspension, How far one is at liberty to build a mill upon his own property, which lies within the thirle of another heritor's mill? For the affirmative, the authority of Craig was referred to, Lib. 2. Dieg. 8. § 8. which seems to be very express. For the negative, the authority of Stair, Tit. SERVITUDES REAL, § 23. which is no less express, that the building of a mill within the thirle, on pretence of getting voluntary or out-sucken multure may be stopped, as the use of querns may be; and two decisions observed by Fountainhall, one of February 28, 1684, M'Doual against M'Culloch, No. 4. p. 8897; and another, February 28, 1695, Crawford of Carsbarn against Sir John Shaw of Greenock, No. 5. p. 8898.

The Lords, on report, as the point merited a judgment, "Remitted to the Ordinary to pass the bill."

And when afterwards the suspension came to be discussed, the Lords "Suspended the letters, and found that the building could not proceed."

*Kilkerran, No. 15. p. 577.*

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1751. *February 6.* BUCHANAN of Glins, *against* CUNINGHAM of Bandalloch.

Duncan Buchanan of Cashlie 1657, disposed the lands of Middle-Cashlie to John Logan, who became bound to bring his whole grindable corns to the disponent's mill of Gartinstary: "And the said Duncan Buchanan bound him to cause the miller, or tenant who possess the mill and mill lands of Gartinstary, in any time thereafter, to content and pay to the said John Logan, his heirs and successors, who possess the said town and lands of Middle-Cashlie, pertaining to him, six pecks teind meal yearly, in all time thereafter, forth of the said mill of Gartinstary, and lands thereof, conform to use and wont; to be paid into the said John Logan's town of Middle-Cashlie." He also disposed the lands of Easter Cashlie to Duncan Buchanan in Harperstane; with the same thirlage, and the same obligation on the disponent; only it is not subjoined to the clause of thirlage, but placed before it, and subjoined to the receipt of the price.

He also disposed the mill of Gartinstary 1671 to John Buchanan; whose right came into the person of John Buchanan of Glins.

Glins pursued Cuningham of Bandalloch, heritor of Easter and Middle-Cashlie, who claimed deduction out of his multure, of the said payment due out of the mill to his lands.

Pleaded for the pursuer: This obligation for teind meal is personal, and cannot affect singular successors: There is no teind payable out of the mill; and supposing it to be for the mill-lands, the defender has no right to the teinds thereof.

Pleaded for the defender: The meal is made payable out of the mill to the lands;

No. 94.

If a mill can be built within another heritor's thirle?

No. 95.

Lands being thirled, and the miller bound to pay a certain sum to these lands it was found a real quality of the thirle.