MILL.

1752. *December* 26.

CAPTAIN URQUHART of Burdyards *against* TULLOCH of Tannachie.

No. 1.

LANDS being thirled to another man's mill, the heritor cannot build another mill within the thirl on pretence of serving outsuckeners, nor even for serving other lands of his own not thirled.

The town of Forres and its territory is thirled to Captain Urquhart's mill, (which anciently belonged to the Abbacy of Pluscardine) for all grains consumed within the town and liberties. Tannachie's estate of L.200 or L.300 sterling of rent lies in the neighbourhood, and has no mill nor water for one, and therefore he purchased a small feu on this side of the rivulet that runs by the town, and is within its liberties, and holds of the town, in order to build a mill to serve his lands of Tannachie, which are not thirled. He began the building, and Captain Urquhart obtained suspension, and pursued declarator that he could not build a mill within the thirl, and the case was this day reported by Lord Dun. Both parties cited Craig's authority, and the pursuer cited Lord Stair's, and 28th February 1684, M'Dowall against Macculloch,* 28th February 1695, Crawford of Carsburn against Sir John Shaw of Greenock;† Drummond of Megginch against the Earl of Northesk; 19th December 1710, Magistrates of Edinburgh against Jean Alexander;‡ and 18th July 1746, Mackie against the Malsters of Falkirk,‖ where we discharged steel malt mills within the thirl, even though we found the *invecta et illata* not thirled. We found that the defender could not build a mill within the pursuer's thirl, and decerned and declared accordingly. I observed that it seemed implied in the very nature of the contract: The question cannot occur but where there is both insucken and outsucken; therefore, suppose a Baron, having a mill in his Barony, and both insucken and outsucken grinding at his mill, there being no other in the neighbourhood, or so convenient, feus out part of his lands, but that he may not prejudge his mill rent, astricts the lands feued to his mill; the parties could not possibly mean that the vassal should not be allowed to grind his own corn in prejudice of the mill, yet he might grind other people's corns who also fre-

* DICT. No. 4. p. 8897. † DICT. No. 5. p. 8898.
‡ DICT. No. 6. p. 8899. ‖ DICT. No. 89. p. 16023.

No. 1. quented the mill, but were not astricted; and the case was the same, if he feued or sold his mill and astricted his own lands to it, or if for any other valuable consideration an astriction was purchased. 2*do*, That *concesso quovis jure omnia concedi videntur, &c.* but it was impossible for the pursuer to have any check upon abstractions if such a mill was built, especially here, where all consumed in the thirl was astricted, and consequently every cake or bannock to be eaten by the miller or mill servant of the new mill. But surely it was impossible to keep him from eating the multure of his own mill. Kames, (who while at the Bar, had written the defender's Information) agreed with my reasoning, where lands were feued under an astriction, but differed in this case, because it was not clear that the town was anciently astricted, or before two contracts in 1674 and 1696; and Dun also differed from the interlocutor, because it was to serve his own estate that the defender wanted this mill. (See DICT. No. 96. p. 16028.)

See PROPERTY.

See NOTES.