*** Stair reports this case:

No. 37.

Umquhile Laurence Oliphant of Conde did dispone to Thomas Oliphant his third son, certain lands, and the charter contains this clause of thirlage, " cum granis super dictis terris crescentibus, semine et decimis exceptis, et molendis apud molendinum de Condi, solvendo multuras et lie knaveship solitas et consuetas. This Conde, and his miller of Conde, pursue Thomas and his tenants for the abstracted multure. The defender alleged *absolvitor* as to the multure of bear, because there was never any paid to this mill; and because the neighbouring mills in that country, though astricted by the like cause, pay no multure of bear, especially seeing the thirlage is but for multures, knaveship used and wont, so that unless that the pursuer can instruct that multure of bear was used and wont, he cannot claim the same. The pursuer answered, that he opponed the clause of thirlage, being expressly of all grains growing, teind and seed excepted, and that part of the clause, used and wont, relates not to the grains, but to the quantity of the multure; and if before this thirlage, bear was not accustomed to pay multure of bear, but of oats; the multure of the bear must be the same as of the oats; for there is nothing pretended here of prescribing a liberty, as of bear, by positive and known acts; nor can be, seeing it is not 40 years since the right was granted.

The Lords repelled the defences, and sustained the thirlage for the bear, according to the quantity of the thirle multures of the mill; but in respect, that the defender hath ground to doubt of the meaning of the clause, and that 30 years by-gone multures were now pursued for, they moved to the pursuer to pass from by-gones.

Stair, v. 2. p. 203.

1675. *July* 3. BAIRDNER *against* COLZIER.

No. 38.
What extent of astriction implied in the right to a mill?

In a process for abstracted multures, the time of the advising of the cause, these points were debated among the Lords, viz. Whether or not the right of a mill being feued by the Abbot, in these terms, *cum astrictis multuris*, did import astriction of all the grains growing, so that those that were astricted should be liable to bring all the corns that grew upon the lands to the mill; and in case any such be sold, the heritors and their tenants should be liable for astricted multures; and, *2do*, There being decreets recovered at the instance of the feuer of the mill, against the feuers of the lands, for abstracted multures of *grana crescentia*, if the same should import astriction as to all such grains, though neither the right of the feuer of the mill, nor of the heritors of the lands be express of *grana crescentia*, but only of the terms foresaid *cum astrictis multuris*.

Some were of the opinion as to the *first* point, That a feu of a mill in the terms foresaid *cum astrictis multuris*, should import nothing else, but that they that were

No. 38.

within the sucken and astriction should be liable, only to grind at the mill all such corns that they should have need and occasion to grind, seeing thirlages are a most odious servitude, and ought to be taken strictly; and multures being *molituræ* and due for grinding, they ought to be understood only in the case of corns, which the feuers do bring to the mill to grind, or which they have need and use to grind, and yet abstract and go to other mills, otherwise there should be no difference betwixt the astriction of *grana crescentia*, and an ordinary astriction. 2*do*, The case in question was of a mill feued by the Abbot of Culross, and of lands likewise feued by himself after the feu of the mill, and the time of the feu of the mill lands being the Abbot's own, either in mainsing or set to tenants; it cannot be thought, that the astriction was in other terms than such as tenants are in use to be astricted to their master's mill; and besides the teind and seed, and the duty payable to the master, which being payable to the Abbot the time of the feu of the mill, was free of astriction; the tenant having the residue of the rent for entertaining of his family, and for defraying the charges of the labouring and servants fees, and other necessary expenses which could not be defrayed otherwise, but by selling some of the corns growing. It cannot be conceived, that the Abbot, or any other master, would astrict his tenants in these terms, that they should be liable for dry multures, except it were expressed, and that the astriction had been *granorum crescentium*. Yet the Lords did demur as to this point, in respect it was vehemently urged by that the astrictions in the terms foresaid ought to be understood of *grana crescentia*, otherwise it should be in the power of those who are astricted, to sell all their corns, and to buy meal for their family, and so to elude the thirlage. Albeit it was answered, That it was not to be presumed that feuers or tenants would do so, and if they did, they ought to be liable for abstracted multures effeiring to such quantities as were necessary, and they were in use to grind for their families.

Another point was agitated and debated amongst the Lords, viz. That the said decreets could not be obtruded to the defender, seeing neither he nor his author was called to the same, and *res* was *inter alios acta*; but the Lords did not decide these points, but recommended to some of their number to endeavour to settle the parties.

Dirleton, No. 293. *p.* 142.

1678. *December* 11. RAMSAY *against* The TOWN of KIRKALDY.

No. 39.
Prescription of multures by long freedom was found not inferred in favour of feuers in the

Sir Andrew Ramsay being infeft in the west mill of Kirkaldy, with the astricted multures thereof, the same being the mill of the barony belonging to the Abbot of Dunfermline, whereby the feus of the Abbacy about Kirkaldy were feued; there was thereafter a posterior thirlage of the Town of Kirkaldy to that mill, whereby multure was due for all victual which was brought within the Town, and tholled fire and water there. Sir Andrew pursues the feuers for abstracted