

1632. July 13. EARL of MORTON *against* TENANTS of Muckartshire.

No 116.

THE Earl of Morton pursued the Tenants of Muckartshire, for abstracted multures from his mill of Muckart, whereunto he was seised 1546, by the Archbishop of St Andrews, *cum astrictis multuris usitatis et consuetis*. *Alleged*, His sasine gave him no interest, unless he would show, that the defender's lands libelled were astricted before the granting of the said infeftment. *Replied*, It being the mill of a barony, did import, that the whole lands within the barony were astricted thereunto. Likeas, he offered to prove, that ever since, the whole barony was in use to come to the said mill. *Duplied*, *Usus et possessio ad inducendam astrictionem non sufficit*. THE LORDS sustained the exception.

*Fol. Dic. v. 2. p. 106. Spottiswood, (MILLS and MULTURES.) p. 209.*

\* \* Durie reports this case :

THE Earl, and one Crawford his tacksman concurring, being infeft in the mill of Muckart, with the astricted multures used and wont, by the bishop of St Andrews' (this mill being the only mill of the barony) pursues the feuars of the lands of this barony, every one for their own lands, for abstracting of the multures, and to pay the same to his tacksman of the said mill; wherein the LORDS found, that the Earl's charter and sasine foresaid, containing disposition of the mill, (being the only mill of the barony) with the astricted multures, used and wont, and the continual use of the defenders' coming and grinding their corns of their lands at the said mill, was not a sufficient ground or title whereby the defenders might be compelled to come to the said mill, and grind their corns thereat, as thirled and astricted thereto; for, by that infeftment, they were found not to be thirled, which was granted to the pursuer, bearing *ut supra*, nor yet by their use to come and grind their corns at the said mill, how long soever they had so done, except that the pursuer would reply, and prove express astriction of these lands, pertaining to the defenders, to this mill, either by their evidents, bearing them to be thirled thereto, or by some lawful acts of Court, and constitutions, whereby the saids lands and possessions thereof were so thirled before the defender's infeftment, and no otherwise.

*Act. Nicolson & Dunlop. Alt. Stuart & Primrose. Clerk, Hay.*

*Durie, p. 646.*

1635. February 5.

DOG *against* MUSHET.

ONE Dog pursuing Mushet, for abstracting of his corns, growing upon his lands of ———, which lands are of the Lordship of Cessintullie, in the mill of the which Lordship the pursuer is infeft, with the astricted and thirled mul-

No 117.

A party was infeft in a mill, the only mill of the barony, with

No 117.  
the astricted  
and thirled  
multures of  
the whole  
barony. This  
found suffi-  
cient title to  
pursue for  
abstraction,  
if the lands  
are part of a  
barony which  
had been once  
the King's  
property.

tures of the said whole Lordship; and the defender *alleging*, That the pursuer's sasine of the mill foresaid, and thirled multures therein contained, cannot furnish this action, except that the pursuer could qualify and prove, that either the defender was thirled to the said mill, by some clause of his infeftment, which astricted his lands thereto, or else by some other act and constitution of thirlage, or other lawful writ, which might astrict him to the said mill; this exception was repelled, in respect of this reply, which the LORDS sustained, and admitted to the pursuer's probation, viz. That the mill libelled is the sole and only mill of this barony belonging to the King's Majesty, and that the defender's lands libelled are a part of the said Lordship, and that the heritors thereof have been in use past memory of man, to come and grind their corns of the saids lands at the said mill, as thirled thereto, and to pay therefor the quantities of the multures acclaimed, and to cast the mill-dams, and to lead the mill-stones, and to repair the mill; which use and consuetude in the King's mill is sufficient, albeit more is required in mills pertaining to private persons; which reply being proved, the LORDS found as sufficient to constitute a perpetual thirlage, as any writ or constitution, being in the mill of the King's barony.

Act. ———.

Alt. *Dunlop*.Clerk, *Gibson*.*Fol. Dic. v. 2. p. 105. Durie, p. 749.*

\* \* \* Auchinleck reports this case :

JOHN DOG infeft in the mill of Cessintullie, with the multures, pursues certain vassals of the barony of Cessintullie (which is a part of the King's property) for abstracted multures. It is *alleged* no process, except it were libelled *per expressum*, the defenders were astricted either by their infeftments, or by lawful acts of thirlage. To which it was *replied*, That it is sufficient that the pursuer was infeft by the King in the said mill, with the said multures, used and wont, and this is the mill of the barony whereunto the defenders have been in use to come in time bygone. THE LORDS repelled the exception, in respect of the reply, and this was the King's mill of the ———, but in other private men's mills, astriction is requisite, either by infeftments, or acts of thirlage, as was found in the action pursued by James Crawford against the Feuars of Muckhart, No 108. p. 10853.

*Auchinleck, MS. p. 130.*

No 118.  
In a thirlage  
to the King's  
mill, where no  
writ was  
shown, but  
the thirlage  
constituted

1662. *January 3.* STUARTS *against* ABSTRACTERS OF MULTURES.

IN an action for abstracted multures pursued by James and Robert Stuarts, against the Heritors and Tenants of the lands astricted to his mill of Aberlemnock, it was *alleged* for the defenders, That there was no astriction shown, and