

feued the said mill, and so after the Lord Torphichen had let the lands of Rot-tourlaw, without any astriction to the said mill, his Lordship could not astrict them by a sequent feuing of the said mill. To which it was replied, That the exception is not relevant, except the excipient would allege that he or his authors were infest *cum molendinis et multuris*, in respect it was the mill of the whole barony whereto the said lands were astricted before the feu. The Lords repelled the exception, in respect of the reply.

*Auchinleck MS. p. 129.*

\* \* See Durie's report of this case, No. 115. p. 10852. *voce* PRESCRIPTION, from which the proposition on the margin is taken; from which likewise it is to be understood, that a feu charter bearing a certain feu-duty *cum omnio alio onere*, without a clause *cum molendinis*, imports not exemption from thirlage.

1629. July 17.

A. against B.

If the tenants abstract corns from the mill whereunto they are thirled, and, when they are pursued for abstracted multures, they offer them to prove that they offered their corns to the mill, and that the mill wanted water; if it be replied, that notwithstanding they made offer of a part of the corns of a certain time of drought, yet, before the time, they abstracted the corns, and ground them at other mills, the exception should be repelled, in respect of the reply.

*Auchinleck MS. p. 129.*

1631. November 26. MR. WILLIAM OLIPHANT against EARL MARISHAL.

The Earl granting bond to Mr. William, obliging him to infest him in some oxen-gates of his lands, of the barony of Strabrock, and to subscribe a charter of feu-holding, for a certain duty therein mentioned, to be paid therefor allenary, which was also under reversion; and the Earl being charged to give him such a feu-charter, and suspending, upon production of a feu-charter, bearing, "payment of the feu-duty convened on, nomine feudifirmæ tantum pro omni alio onere, demanda, vel servitio, quod de dictis terris exigi poterit;" the Lords found, That this charter satisfied not the tenor of the bond, because the charter bore not a clause therein, *cum molendinis et multuris*, whereby, if the same had been inserted, the receiver might be free of all astriction and thirlage of the lands disposed to the mill of that barony whereof the said lands disposed were a part; for the Lords found, that the bond being of this tenor, obliging the maker thereof to dispose the lands in feu, to be holden of him for payment of a feu-duty allenary, albeit the bond bore no more, neither made mention of mill nor multures; but only proported "the payment of the foresaid feu-duty therefor allenary," ought

No. 20.  
about the mill, are implied in every sort of thirlage, and go along to purchasers, tho' not expressed.

No. 21.

No. 22.  
A feu-charter bearing a certain feu-duty *pro omnia alio onere*, but with no clause *cum molendinis et multuris*, imports no exemption from thirlage. See Newliston; No. 20. *supra*.