

To this it was answered, That the clause *cum molendinis*, &c. even in the tenendas, was a sufficient discharge of thirlage, according to the opinion of our most eminent lawyers, and numberless decisions; and especially in this case, where there is so much due by the reddendo for multures. As to the charter of the mill, *cum servitiis*, the Earl of Athole had no power to grant these services, having discharged them so long before in the charter of the lands. *2do*, As to the prescription, their coming to the mill was *meræ voluntatis*, the mill being conveniently situated for the tenants of Urchilberg, and their corn ground there as cheap, or cheaper than it could be any where else, for they payed no outsucken multure, but only the hire of the servants; so that no prescription could be inferred from thence.

The Lords seemed to think there was no astriction in this case, and could hardly conceive a thirlage of sequels and services without multures; but, at the desire of the pursuer, before answer, they allowed a proof, whether the tenants of Urchilberg were in use to perform services to the mill, such as repairing the mill-dam, carrying millstones, &c. which the Lords thought could not be presumed to be *meræ voluntatis*, and so might remove the objection to the prescription.

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1739. November 21. CRAWFORD of MINORGAN *against* ———.

[Kilk., No. 1, *Ranking and Sale*.]

IN this question, the Lords found, That a judicial purchaser of lands could not buy in a debt that had been omitted in the ranking, and, in right of that debt, compete with the rest of the creditors, and retain part of the price, though at the sale he had given his bond for the whole; they thought such a bargain was *contra bonos mores*, and that there was a presumptive fraud in buying in a debt which could serve for nothing but to vex the creditors and protract their payment, the purchase being secure enough without it.

N.B.—In this question it was supposed, that, after the ranking is finished, and the certification gone forth, yet, while the subject is *in medio*, and the scheme of division going on, any creditor omitted in the ranking may compear and give in his claim, because the process of division is a sequel of the ranking, without which it is reckoned complete.

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1739. November 27. LORD TORFICHEN *against* FEUARS of ———.

LORD Torfichen's feuars had a dispute with the vassals of another superior,