

it were also alleged, that they and their authors paid the astricted multures, or that there was some sentence or other constitution, seeing coming to a mill, and paying outsucken multure, is but *actus voluntatis*.

No. 50.

*Harcarse, No. 729. p. 206.*

1692. January. NEWBYTH against HEIRS of WHITEKIRK.

No. 51.

A resignation and infeftment *cum molendinis et multuris* in favour of a party, found not to affect the right of the proprietor of the mill to the thirlage of the lands. See APPENDIX.—This case is mentioned in No. 5. p. 8898. *voce* MILL.

1696. June 20. DOW of GLENDYMILNE against BURT.

No. 52.

The question was, where there was a bond of thirlage astringing lands to a mill, not as to *omnia trana crescentia* or *invecta et illata*, but only for what grain they should grind for the use of their own family, and did not mention the minor services of helping home with the mill stones, repairing the mill dams, &c. whether these be included and comprehended? Allegded, *minus inest majori*, and these lesser servitudes are but pendicles, and necessary consequents of the astringion.

Mill services implied in every sort of thirlage.

Answered, The presumption lies for liberty against servitude, unless they be introduced either by express paction or prescription: The 1st was not pretended, neither could the 2d take place; the bond of thirlage being only granted in 1670, and he had a feu charter two months prior to the bond bearing *a reddendo pro omni alio onere*; but the Lords having read the charter, and it wanting *cum molendinis et multuris* in the dispositive clause, they found this thirlage was but in the case of any other astringion, (seeing it mentioned they stood thirled before the same,) and therefore carried all the lesser burdens and services along with it, though not expressed. This is conform to a decision, 27th February, 1668, Maitland against Lesly, No. 35. p. 15978. Yet law says, *unumquodque prædium præsumitur liberum*.

*Fountainhall, v. 1. p. 722.*

1697. February 4. CHIESLY against DALMAHOY.

No. 53

It was a declarator of liberation from thirlage, for finding and declaring, that his lands of Cockburn were no more astricted to the mill of Balerno; because though they were formerly thirled thereto, as a part of the barony, yet he had obtained his lands disjoined from the same, by a disposition of the superiority of his lands, in his own favour, from my Lord Balmerino, superior, by which he came to hold of the King. Answered, By the contract past betwixt Lewis of Merchiston, Mr. Peter Paterson, and Mr. William, it is indeed agreed, that Mr. William have his own superiority, and Mr. Peter is to have the property of the mill, *cum multuris earumque sequelis*, which is now conveyed to Dalmahoy; yet the

One of the vassals of a barony having obtained his lands to be disjoined from the same by a disposition of the superiority in his own favour; the