

No. 59. mine these objections against the depositions, though material, because the second point decided the cause, whereby the Lords found, that Shirgarton, the defender, his author's charters by a tract of time, viz. in 1597, 1614, and 1619, bearing *cum molendinis et multuris*, (though in he *tenendas* only), *et pro omni alio onere* in the *reddendo*, did import a liberation from this thirlage, which, by the first vote, they found constituted by the charter 1541. See Stair, 7th December 1677, Henderson *contra* Arnot, No. 126. p. 10867; and 11th January 1678, Lord Balmerino *contra* Cockburn, No. 127. p. 10870. where the clause *pro omni alio onere* was found to amount to a liberation; as to the import of the clause *cum communi pastura*, in the *tenendas* of a charter, *vide* 25th November 1704, Town of Culross, (See APPENDIX.)

On the 27th of February 1705, Gartmore entered his appeal to the parliament against this interlocutor.

Fountainhall, v. 2. p. 262.

1706. July 11. DUNDAS *against* SINCLAIR.

No. 60.

An ancient charter of land *cum molendinis et multuris*, sustained to infer immunity from thirlage in favour of a succeeding heritor who derived no right from the obtainer of the charter.

Fountainhall.

* * This case is No. 14. p. 35. *voce* ACCESSIORUM SIQUITUR, &c.

1707. February 22.

The TOWN of EDINBURGH as Gubernators of Heriot's Hospital, *against* WILLIAM ALVIS, and Other Brewers in the Canongate.

No. 61.

A clause thirling all that tholes fire and water does not import that all malt brewed, but only what is kilned and cobled, within the thirle should pay multure.

The Canonmills being an ecclesiastic feu of the Canons of Holyroodhouse, came by erection into the Ballendens, Barons of Broughton, and was disposed by them, and the Earl of Roxburgh, as come in their right, in 1637, to the town of Edinburgh as feoffees in trust for Heriot's Hospital; and the feuers in Canongate, though astricted by their charters to these mills, yet of late years began to abstract, and go to Leith mills, belonging to Balmerino, or to the Stockbridge. Whereupon the town raises a process against them both, for declarator of their right, and for abstraction, and instructed the constitution of the thirlage by the Hospital's charter, and the vassals' own charters, by being the mill of the barony, by acts of Court, and by use and wont; and they denying the extent of thirlage, there was a mutual probation allowed both parties before answer, how far they have been in the immemorial use and custom of bringing all that tholes fire and water to these mills; and the defenders to prove that they have gone frequently, openly, and avowedly, in fair day-light, to other mills, or have been discharged and exeemed from the astriction by a person having right. And the probation coming this day