

- No. 22. to import freedom and liberation of the feuer from all thirlage of these lands to that mill of the barony, either already made before the bond, or to be made any time after the same; and that that word "allenary" ought to produce that effect; and therefore that the charter ought to be made with that clause foresaid, which may import the same: Neither was it respected what the suspender alleged, that this charter was conform to the bond in every point, and that it was not now time to dispute what that clause anent the payment of the feu-duty only appointed to be paid should import; for, seeing the charter bore that clause, it was free to him to claim the extent and effect of that clause, when any question should arise upon any deed contrary or different therefrom, which at this time was not proper to be agitated; notwithstanding whereof, the Lords found, that he ought to have liberation from all thirlage, and that the charter ought to bear a disposition of the lands cum molendinis et multuris, albeit the bond bore nothing of thirlage, mills, nor multures, but only that word, "allenary," as said is.

Act. *Præsens.*Alt. *Nicolson.*Clerk, *Hay.**Durie, p. 603.*

\* \* See Monteith, 4th December, 1716, *infra, h. t.*

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- No. 23. 1632. July 13. EARL OF MORTON *against* TENANTS OF MUCKART.

Infestment in a mill *cum astrictis multuris usetat. et consuet.* though the mill was the only one of the barony, was found not sufficient to infer astriction against the tenants of the barony, as the terms *usitat. et consuet.* were relative, and regulated by the practice prior to the infestment.

*Durie. Spottiswood.*

\* \* This case is No. 116. p. 10853. *voce* PRESCRIPTION.

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- No. 24. 1632. November 20.  
SIR ALEXANDER HAMILTON *against* MATTHEW HAMILTON.

The clause "cum molendinis et multuris," in the *tenendas* of a charter, with a feu-duty *pro omnia alio onere*, found, in certain circumstances, not to liberate from astriction.

By contract passed betwixt the umquhile Laird of Innerwick and umquhile Alexander Hamilton of Easterneith, *anno* 1572, the Laird is obliged to give a feu infestment of the said land to the said Alexander, who, by his bond, is obliged that he, being infest, shall bring his corns to the mill of Botehaitt, and pay such a multure thereof. Sir Alexander Hamilton, son and heir to the Laird of Innerwick, contractor, pursues Matthew Hamilton, son to the said Alexander of Easterneith, for his abstracted multures. It is excepted, that he is infest by the pursuer in the said lands *cum molendinis et multuris*, without any relation to the said contract,