

right; otherwise, it flows *a non habente potestatem*; and, by the decisions in Durie, particularly 12th July 1621, Douglas *contra* the Earl of Murray; 17th July 1629, Newliston *contra* Inglis; and 13th July 1632, Earl of Morton *contra* Feuers of Muckart;—the Lords found, that anciently astricted multures do not follow in consequence of a right that a party may acquire to a mill, unless these anciently astricted multures be likewise disposed, *per expressum*; and, that tenants going to a mill, can never oblige the master and heritor, without his own knowledge and consent, it being *actus meræ facultatis*, and free to go or not at their pleasure; unless there had been acts of courts, decreets, or other legal compulsiors forcing them.—THE LORDS sustained the pursuer's title; and found he need not connect his right with Abernethy; and that his investment of the mill carried the ancient thirlage along with it as a consequence.—And I find this agrees with what my Lord Dirleton observes in his Doubts and Questions, p. 128. that *vendita moletrina, licet non fiat mentio districtus, venit tamen, quia simplex rei alienatio pertinentias rei continet*: And here the LORDS declared the thirlage in favour of Glencorse, the pursuer. (See the cases above quoted, under THIRLAGE.)

*Fol. Dic. v. 1. p. 1. Fountainhall, v. 2. p. 161.*

1706. July 11. DUNDAS of Breastmill *against* SINCLAIR of Carlourie.

THE Lord St John, or preceptor of Torphichen, feus his mill, called the Breastmill, to one Dundas, in 1558, and thirls his whole barony of Oldliston thereto. James Dundas, now of Breastmill, pursues a declarator against Harry Sinclair of Carlourie, of thirlage and astriction, and for astricted multures.—*Alleged, 1mo*, That his lands of Over and Nether Carlourie, are no part of the lands astricted; in so far as their rights mention them only to lie within the barony of Liston; which is different from Oldliston; which only is thirled by the original charter of the mill in 1558.—*Answered*, The designations are materially the same; and his lands are part of the barony of Oldliston.—THE LORDS repelled the allegiance, unless Carlourie would prove, that Liston was a separate distinct barony from Oldliston.—*Alleged, 2do*, That the Lord St John, superior of this mill, feued out the lands of Over Carlourie in 1543, to one Kincaid, *cum molendis et multuris*; which freed these lands of all thirlage, being 13 years before the mill was feued out; after which, the superior could not, by any subsequent deed, thirl or astrict these lands, by his charter of the mill to Dundas.—*Answered*, Harry Sinclair, now of Carlourie, cannot found on that exemption and immunity given to Kincaid; unless he can instruct a connected progress from him down to himself; for it is *jus tertii* for him, to found on a charter whereto he shows no right.—*Replied*, If the deed were within these forty years, there might be some pretence to cause an heritor to show a connection, for establishing his right of property; but this charter of exemption being more than 150 years ago, it is impossible to demand a connected progress, only to excec from a servitude; unless they will say, that Kincaid, or some in his

No 13.

No 14.

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