

the Canongate, and of the Town Court of Edinburgh who are barons of the Canongate, this astriction hath been asserted, and all within the bounds have been discharged to buy any grinded malt but what is grinded at the Canonmills. Nor was the matter ever called in question before. And it is a mistake to think that thirlage is so odious, when it is so natural and inherent to the mill of the barony, especially of Kirklands, or to the King's mills: And it has been found by decisions to extend further than was expressed, June 26, 1635, Laird of Waughtoun against Hume of Ford, No. 25. p. 15971.

No. 61.

Duplied for the defenders: We are not to carry servitude so high, as to defeat liberty and property. And though what is only brewed within the thirle be found free, the Canonmills will have an effectual thirle of the landwart Barony of Broughtoun, and such as can be more conveniently served there than else where, and of grain steeped within the thirle. Nor are we to give charity by way of injustice; for the divine law forbids even to favour the poor man in his cause. *2do*, It is absurd to say that any superior can by his acts of court subject his vassal to an extravagant servitude not provided in his charter. And as to the authority of Craig, and of Spottiswood, (who expresses his opinion something obscurely) it cannot be sufficient to take away the defender's interest; seeing my Lord Stair and Sir George Mackenzie (who wrote after these Gentlemen, when the matter was better understood, and the principles of liberty and property against the ancient Longobardick servitudes more asserted) lay it down as a principle, that tholling fire and water imports only steeping and kilning.

The Lords found that the clause thirling all that tholes fire and water, doth not import that all malt that is brewed within the thirle should pay multure, but only that which is kilned and cobled within the thirle.

Forbes, p. 134.

1797. *March 14.* NEWMAINS *against* BEMERSIDE.

Where the teinds originally belonged to the person who constituted the thirlage, the teinds are understood to be astricted.

No. 62.

Fountainhall.

* * * This case is No. 38. p. 10727. *voce* PRESCRIPTION.

* * * See Countess of Rothes, No. 426. p. 11256. where teinds, not *decimæ inclusæ*, found free of multure.

1708. *November 24.*

MR. WILLIAM HALKERSTON, (OR HAXTON), of Rathillet, *against* JOHN MELVIL of Mordicarnie.

The lordship of Fife having fallen to the Crown, by the forfeiture of Murdoch Earl of Fife, King James V. *in anno* 1535, granted a feu-charter to the defender's

No. 63.
Thirlage to
the King's