

Thirlage is taken off expressly, sometimes by a Discharge or Renunciation without further Solemnity. But most frequently it is excluded by a new Charter of the Lands thirled *cum molendinis et multuris* 26 Novemb. 1635. *Elephant contra E. Marshal Craig Feud. Lib. 2. Tit. 8. §. 6.* In the Tenendas only when granted by a Subject 7 Decemb. 1665 *Vetch contra Duncan* observed by *Dirliton*, and in the dispositive clause when the King is Author of the Charter 8 Januar. 1662 *Stewart contra Feuars of Aberlone*. The Reason of the Difference is when Signatures pass the King's Hand, or pass in Exchequer they bear only Tenendas &c. and the particular clause as a piece of common Stiles is left to be extended at the Seals. Whereas the Tenendas in Charters granted by Subjects, are supposed to be more particularly noticed, and therefore more Weight is laid upon them. But yet the Lord *Stair* (Gld.) insinuates, that even in Charters granted by Subjects the Import of *cum molendinis et multuris* may be thought more extensive in the dispositive Clause, than in the Tenendas: As if these Words in the dispositive Clause carried an Exemption from a Form of Thirlage, whether there be a Mill upon the Land disposed or not; but in the Tenendas imported only Immunity when there is a Mill upon the Lands. Regulariter a Person having disposed his Lands thirled to his own Mill, *cum molendinis et multuris* to one; and afterwards the Mill and Multures to another, the posterior Infeftment of the Mill and Multures will not affect the Lands as flowing from a non habente potestatem. Yea an ancient Charter of Lands *cum molendinis et multuris*, was sustained to infer Immunity from Thirlage in Favour of a succeeding Heritor in these Lands; altho' he instructed no Connection of his Title thereto from the Oblainer of the Charter: Because Lands once become free, are not brought under Service again, without a positive Feud of the Proprietor for the Time 27 July 1706 *Dundas of Bristmill contra Sinclair of Corlairy*. The Clauses *cum molendinis et multuris* in the Tenendas, and a Duty *pro omni alio onere* in the Reddendo, were sustained to infer an Exemption from Thirlage to the Heir of a Barony 26 Januar. 1705 *Graham of Gartmore contra Ure* 1723 *Heirs of Ruffel of Gartness and Noir contra Waddel*. Thirlage of Lands constituted by an original Feud Charter thereof from the King with the Mill and Pertinents, was found taken off by subsequent Charters that the Vassal granted of these Lands *cum molendinis et multuris* in the Tenendas and a Duty *pro omni alio onere* in the Reddendo: Albeit the Vassal had afterwards come to that Mill and paid insuchen Multure and Services for many years 26 Januar. 1705 *Graham of Gartmore contra Ure* of *Shergartour*. But a Person having <sup>continued</sup> Payment of thirled Multures and Services for 7 Years, immediately after his obtaining a Charter from a Subject *cum molendinis et multuris*, without the Clause *pro omni alio onere*, being pursued for the Multures of succeeding Years, was found free from

from all preceding the Pursuit, as being a doubtful Case; but to be liable thereafter 27 Januar. 1692 *L. Newbyth contra Lady Whitkirke Stair* Gld. Its having passed from the implied Privilege of Freedom. The Words *pro omni alio onere* do not imply the same Thing in a Charter, that they do in a Bond, obliging a Person to grant a Charter for a Feud Duty *pro omni alio onere*. For in the Case of such a Bond, they import an Obligation to dispose free of Thirlage: Whereas a Charter of Lands for a Feud Duty *pro omni alio onere* without the concurring Words *cum molendinis et multuris*, doth not work an Immunity from Thirlage 17 July 1629 *L. Newliston contra Ingles* 26. Novemb. 1635 *Elephant contra E. Marshal*. For if any such Privilege were intended, it would be some Way expressed either in a general or particular Manner, seeing thereby the Disposer is obliged to ~~lower~~ lower the Rent of his Mill. Where <sup>one</sup> was obliged to infest another in some Lands, who, when infest, was to grind his corns at the Disposer's Mill; this Thirlage was not taken away by a posterior Charter and Infeftment *cum molendinis et multuris* containing a certain Silver Duty to be paid *pro omni alio onere*. But these were understood as made in Implement of the Contract, altho' they did not mention nor had any Relation to it: Unless the Heritor of the Lands destined to be thirled by the Contract could make appear, that in Satisfaction thereof a formal Charter and Infeftment were perfected. For it was thought that such a common Clause in an Infeftment presumed to be given conform to the Contract, could not derogate thereto so as to import a passing from the Thirlage, which was not expressly discharged. But here it was further alleged and offered to be proved, that since the Contract and Infeftment the Proprietor of the Lands in Question had been in Use to come and grind his Corns at the said Mill, altho' he went more frequently elsewhere, which was sustained to support the Obligation of Thirlage 20 Decemb. 1632 *Hamilton of Innerwich contra Hamilton*. By an ancient Statute (Stat. 2. Rob. 1. cap. 35.) all who bought Victual at the Kings Docks forth of Ships, or out of the graneries of Burghes, might pass to any Mill within the four Parts about them freely and peaceably.

## Sect. 2.

### Of City-Services.

City-Services or Services of other Houses and other Buildings, are such as these.

1. That the Wall of one Neighbour's House shall bear the Weight of another's Building that is raised upon it. Which Wall the Owner ought to repair if there be Occasion for supporting that Building l. 33. ff. de serv. pred. urb. Because when any Thing is granted, all Things necessary thereto are