

1741. *November 8.* WEDDERBURN *against* DURIE.

No. 81.
Effect of the
clause *cum*
multuris in
the *tenendas*
of a charter.

It is a known distinction between the import of a *tenendas* of a charter from a subject and a charter from the Crown, that a clause *cum multuris*, though only in the *tenendas*, being in a charter from a subject, is effectual to liberate from thirlage; but where the charter is from the Crown, such clause being only in the *tenendas*, is of no effect; because signatures, when passed in Exchequer, do not contain the *tenendas* other than the word *tenendas*, with an *Et c.* the clause is therefore considered only the work of the writer.

But in this case the question occurred, What should be the effect of such a clause in the *tenendas* of a charter from a churchman? And though no interlocutor passed on it, it was the opinion of some able Judges, that it ought to have no more effect than in the case of a charter from the Crown, and so is to be presumed to have proceeded from inadvertency, if not in the dispositive clause.

Kilkerran, No. 6. p. 574.

1741. *November 17.*

BRUCE STUART of Blairhall *against* COLONEL JOHN ERSKINE.

No. 82.
Negative pre-
scription of
thirlage.

Found, That tenants of astricted lands, not having been in use to come to the mill for the space of 40 years, but having been in use to pay a dry multure for bear, immunity was acquired by the negative prescription, except as to said dry multure. But the Lords were of opinion, though they had not occasion to give a particular judgment, That where a tenement is astricted which comprehends different mailings, and where the thirlage of the tenement is preserved from prescription, though one of these mailings, part of the tenement thirled, should not have come to the mill for 40 years, the astriction of it would be preserved from prescription by the coming of the other tenants of the same tenement.—See No. 76. & 80.

Kilkerran, No. 8. p. 574.

1741. *December 11.* BREWHOUSE *against* ROBERTSON.

No. 83.
Thirlage of
corns that
thole fire and
water.

A question arose upon a clause in a feu-charter, whereby the vassal was taken bound, portare sua grana et fruges quantum serviunt pro sustentatione ipsorum domus, et omnia alia grana tam brasium et triticum, quam omnia alia grana et fruges quæ ignem et aquam in eorum possessione patientur, ad molendina nostra, &c. ibidem moleri, Whether all malt brewed within the thirle was by this clause astricted?