it were also alleged, that they and their authors paid the astricted multures, or that there was some sentence or other constitution, seeing coming to a mill, and paying outsucken multure, is but *actus voluntatis*. No. 50.

Harcarse, No. 729. *p.* 206.

1692. *January.* NEWBYTH *against* HEIRS of WHITEKIRK.

No. 51.

A resignation and infeftment *cum molendinis et multuris* in favour of a party, found not to affect the right of the proprietor of the mill to the thirlage of the lands. See APPENDIX.—This case is mentioned in No. 5. p. 8898. *voce* MILL.

1696. *June* 20. DOW of GLENDYMILNE *against* BURT.

No. 52.
Mill services implied in every sort of thirlage.

The question was, where there was a bond of thirlage astricting lands to a mill, not as to *omnia crana crescentia* or *invecta et illata*, but only for what grain they should grind for the use of their own family, and did not mention the minor services of helping home with the mill stones, repairing the mill dams, &c. whether these be included and comprehended? Allegded, *minus inest majori*, and these lesser servitudes are but pendicles, and necessary consequents of the astriction.

Answered, The presumption lies for liberty against servitude, unless they be introduced either by express paction or prescription: The 1st was not pretended, neither could the 2d take place; the bond of thirlage being only granted in 1670, and he had a feu charter two months prior to the bond bearing *a reddendo pro omni alio onere*; but the Lords having read the charter, and it wanting *cum molendinis et multuris* in the dispositive clause, they found this thirlage was but in the case of any other astriction, (seeing it mentioned they stood thirled before the same,) and therefore carried all the lesser burdens and services along with it, though not expressed. This is conform to a decision, 27th February, 1668, Maitland against Lesly, No. 35. p. 15978. Yet law says, *unumquodque prædium præsumitur liberum.*

Fountainhall, v. 1. *p.* 722.

1697. *February* 4. CHIESLY *against* DALMAHOY.

No. 53
One of the vassals of a barony having obtained his lands to be disjoined from the same by a disposition of the superiority in his own favour; the

It was a declarator of liberation from thirlage, for finding and declaring, that his lands of Cockburn were no more astricted to the mill of Balerno; because though they were formerly thirled thereto, as a part of the barony, yet he had obtained his lands disjoined from the same, by a disposition of the superiority of his lands, in his own favour, from my Lord Balmerino, superior, by which he came to hold of the King. Answered, By the contract past betwixt Lowis of Merchiston, Mr. Peter Paterson, and Mr. William, it is indeed agreed, that Mr. William have his own superiority, and Mr. Peter is to have the property of the mill, *cum multuris earumque sequelis*, which is now conveyed to Dalmahoy; yet the

No. 53. Lords, nevertheless, found, that these his lands, which had been formerly thirled to the mill of the barony, remained still thirled; and that the dismembration alone did not import immunity.

resigning and quitting the superiority can never carry a renunciation of the multures of his lands, unless the same had been particularly so expressed, or that his disposition had been *cum molendinis et multuris;* and their ceasing to be a part of the barony does not liberate him from his astriction, unless it had been so agreed; and though the lands be disponed to him *prout optimum maximum*, so is also the mill to Mr. Peter; nor is his thirlage made less than it was before. The Lords remembered what they had done in Greenock and Carseburn's case; and found Mr. William Chiesley's lands remained still thirled, and that the dismembration alone did not import impunity; and therefore assoilzied from his declarator.

Fountainhall, v. 1. *p.* 763.

1697. *July* 22. MALCOLM *against* RUTHERFORD.

No. 54. Mill-services implied.

Michael Macolm of Balbedy pursues Rutherford of Navity, and Beatson of Coulin, in a declarator of thirlage. Alleged, They acknowlege astriction, but *quoad* the small duties and the services in reparing the mill, they cannot be liable, because, by the contract of feu, they are only thirled to a peck of multure for each six firlots, and it bears no mention of any more; and these servitudes being *stricti juris*, are not to be ampliated. Answered, He opponed his own infeftment, bearing, *cum molendinis et multuris earumque sequelis*; and the small duties and services were but a pendicle and accession, unless they could say exemption, either by express paction or prescription; and it was so found, 27th February 1668, Maitland against Lesly, No. . p. . The Lords found the knaveship and other small services due as well as the multure, notwithstanding of the contracts which were neither taxative nor exclusive.

Fountainhall, v. 1. *p.* 789.

1697. *November* 18.
ROBERT GAIRDEN of Latone *against* THOMAS WATSON of Grange of Barrie.

No. 55. Teind, seed corn, and horse corn, not understood to be comprehended under thirlage of *invecta et illata*, or even of *omnia grana crescentia.*

Robert Gairden of Latone pursues Thomas Watson of Grange of Barrie for abstracted multures; for though they be not *debitum fundi*, and the tenant, is *primo loco* liable therein to the heritor of the mill; yet if the Master, either or his cf ent, upon a bond, poinds his tenants corns, he must be liable for the multure, as well as an intromitter with teinds would be to the teind master. But what if the heritor left as many corns behind in his tenant's barn yard as might pay the astricted multure? Some thought this not sufficient, seeing *omnia grana crescentia* were thirled, and consequently even what he had intromitted with. In this case, deduction being sought for horse corn and teind the Lords allowed the same, where the right of the teind was not in the heritor's person; and the seed being also claimed as a defalcation, the same was acknowleged to be regularly excepted; but here it was contended, there could be no allowance for it, because he being an exient tenant, it was no more sowed, and so could not be called seed. The Lords repelled this, finding no difference, whether the tenant staid or removed; for though it was not made use of as seed there, yet it might be sown else-