No. 48. The Lords found these lands could not be reputed astricted, seeing *res sua nemini servit*; and for the same reason found, That the feu-duty of twenty chalders of oats, payable out of the feuer's other lands, was not liable to astriction, although there was a conversion in money at the vassal's option, unless a contrary custom was proved; and that they would not require forty years, but a competent number of years, being only to clear the import of the clause of astriction used and wont.

Harcarse, No. 728. *p.* 206.

1686. *December.*

The LAIRD of COCKBURN *against* The FEUERS of the TENEMENTS of DUNSE.

No. 49.
An obligation to grind at a certain mill the corn needed for family use, infers no prohibition from buying meal.

The charters of the little feuers about Dunse, and the charters of the heritors of tenements within the town, containing a clause obliging them to grind so much of their corns at Sir James Cockburn their superior's mill, as should suffice for the sustentation of their families, Sir James pursued both for abstracted multures.

Alleged for the feuers of the out-town lands: That if they grind corns at any mill, they were content to grind so much thereof at the pursuer's mill as should sustain their families; but they thought not themselves hindered, by the clause in their charters, to sell their own corns and buy meal. And as an astriction of *grana crescentia et invecta* (which is a larger servitude) doth not hinder selling, but only comprehends what tholes fire and water; far less can selling in this case of a lesser servitude be understood a contravention of the clause.

Answered: If it were allowed to humorous persons to sell their own corns and buy meal, this would take off the whole effect of thirlage; and here the astriction is considerable, being of the sixteenth corn.

Alleged for the feuers of the town tenements, That the clause could not oblige them, who had no corns growing, to buy corns and grind; but the meaning must be, that if they bought corns, they should prefer their superior's mill to another.

Answered: The clause astricting the sixteenth part, which is more than insucken multure, must import an obligement to grind.

The Lords found, That if the feuers who had no corns growing, bought corns, they ought to prefer their master's mill; but that they might buy meal as they thought fit.

Harcarse, No. 727. *p.* 206.

1686. *December.* ALEXANDER HAMILTON *against* SIR JOHN RAMSAY.

No. 50.

The Lords repelled this reason of astriction, viz. That the defenders had been in constant use of coming to the pursuer's mill, for the space of forty years, unless

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