No. 66. with us, since there was never a clause of warrandice pleaded not to import warrandice against a servitude due from the lands disponed.

Answered for Milnhall: That whatever was the import of a clause of absolute warrandice in the civil law, (which depended on several niceties), it is certain, that, among us, that clause hath no such effect; yet the import of warrandice can go no further than use, securing to the purchaser the thing disponed; and consequently, it being once established, that, where a thirlage is anteriorly constituted, the multures are so far separate tenements, they are not understood to be conveyed, unless expressed: The warrandice cannot extend to the multures, because they do not fall under the conveyance; agreeable to which, as the Lord Stair observes, it has not been extended to servitudes of pasturage, or the like, nor, says he, to thirlage; and takes notice of the known case Sandilands against Haddington, the 21st of January 1672, where the Lords found, That warrandice did not extend to multures, although their lands were conveyed *cum multuris* in the *tenendas*, (*voce* WARRANDICE.)

"The Lords found, That the clause *pro omni alio onere* in the first charter, with a clause of absolute warrandice, there being no clause therein *cum molendinis et multuris*, did not import an immunity from the thirlage."

Act. *Rob. Dundas.* Alt. *Graham.* *M'Kenzie*, Clerk.

Bruce, No. 40. *p.* 52.

*** See Henderson against Arnot, 7th December, 1677, No. 126. p. 10867. *voce* PRESCRIPTION. See also Balmerino against Cockburn, 11th January, 1678, No. 127. p. 10870. *voce* PRESCRIPTION,—where a feu-duty *cum omni alio onere* was found to import a liberation from thirlage. See Newliston, No. 20. p. 15968. and Oliphant, No. 22. p. 15969.

1717. *December* 27. HAMILTON of Grange *against* MILLER and AULD.

No. 67.

Gargunnock, proprietor of the village of Saltcoats, in the year 1703, feued out some houses, and some parcels of ground, 40 or 50 feet square, adjacent to the houses, of no other use but to be kail-yards; and, in the disposition and feu-rights, "thirles the feuers to come to the mill of his barony with their grindable corns and malt, and to pay the multures and services conform to the use of the barony." The import of this thirlage being called in question, the feuers argued, That it imported only *grana crescentia*. The proprietor of the mill argued, That the nature of the subject points it out to be a thirlage of *invecta et illata*; for nothing being feued out but a house and a small parcel of ground, fit only for a yard, and that recovered from the sea, which, even supposing it fit for tillage, would not afford a handful of multure in a year; it must be no thirlage at all, or a thirlage of *invecta et illata*. The Lords found the feuers liable in payment of multure, not

only for all their grindable corns growing within the thirle, but for all other corns which they should bring into the thirle to be consumed there, and for all malt, whether grinded or not, brought in and brewed within the thirle; but found, That such corns and malt imported only in the way of trade for exportation or sale, and not grinded or consumed within the thirle, are not subject to the payment of multures.—See APPENDIX. No. 67.

Fol. Dic. v. 2. *p.* 466.

1722. *January* 17.

STEEDMAN, Feuer of the Mill of Kinross, *against* HORN and YOUNG.

No. 68.
A proprietor having established a thirlage of *omnia grana crescentia* in his barony, and of *invecta et illata* in his burgh of barony, it was found, that the same corns, though growing in the barony, and brought into the burgh, could not be subject to both duties.

The contrary, Ramsay aginst Town of Kirkcaldy, No. 39. p. 15981.

The lands of Kinross were feued out by the proprietor to the country-people, for a small silver-rent, with a dry multure of *omnia grana crescentia*, to his mill of Kinross. Afterwards, a burgh of barony and regality was erected, and then the proprietor thirled the inhabitants, who are likewise feuers within that burgh, for so much of their corns that should be imported as tholled fire and water within the burgh; and both these thirlages of *omnia grana crescentia, et invecta et illata*, were established by the vassals' charters. In the prosecution of these several thirlages, a question arose, "Whether the corns of the barony, after having paid a dry multure of *omnia grana crescentia*, being carried afterwards into the burgh, were liable again for the other duty of *invecta et illata*."

It was urged for Steedman, feuer of the mill: That in constituting these two distinct servitudes, the proprietor proposed to himself a distinct duty and rent out of each. He considered what quantity of grain might grow in the barony, and what might be consumed in the town; and he laid a tax upon each of them separately, without relation to the other; and this is most of what he draws instead of rent: Why then should not the same grain be liable to both these duties, if it is a true proposition, that it grew within the one feu, and tholled fire and water within the other? It can make no difference, that the same over-lord is superior of the barony and of the town; and that it savours of a hardship, that he should exact two several multures for the same grain, since such is the express constitution of these different thirles. Put the case, the Baron of Kinross were possessed of another barony in the neighbourhood, thirled to its own mill, it cannot be controverted but that the grains of this other barony, which had paid multure at its proper mill, would be liable to the duty of *invecta et illata*, upon being imported into the town of Kinross, and yet the same imaginary inconveniency or impropriety should occur in that case as in this, that the same grain had paid a double duty. And thus it was determined in the noted case, Ramsay *contra* Town of Kirkcaldy, 11th December, 1678, No. 39. p. 15981.

On the other side it was urged: That the rational interpretation of these servitudes, in consistence with one another, and with cool sense, can be nothing but this:—The proprietor designed not only the corns growing within his barony, but