

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 multure 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 disposed to him *pro ut 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 acknowledge astriction, but *quoad* the small duties and the services in repairing 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 amplified. Answered, He opposed his own infestment, 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 multure; 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 agent, upon a bond, pouds 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 acknowledged 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-