No. 68. all beside brought into his town for the use of the inhabitants, should be manufactured at his mill; or, which to him was the same, that they should pay a certain duty, with liberty of being manufactured there, or any where else. Even from this general view it will be evident, that the same corns can never be subject to both thirle-duties; for the duty being the price of the manufacture, since the same corns cannot be twice manufactured at a mill, they cannot be liable to two thirle-duties; for this were to pay the price twice for the same purchase. These, then, *invecta et illata*, and *omnia grana crescentia*, are not two distinct servitudes, as the pursuer erroneously conceives them, but the same, extending indeed over different subjects, *sciz.* not only the corns growing in the barony, but any other corns brought into the burgh; and so the *grana crescentia*, whenever that servitude is satisfied, by paying a double multure, they have thereby, as it were, purchased their freedom, and cannot be subject to the same servitude over again. The impropriety, therefore, of the pursuer's claim, does not lie simply im demanding double duty for the same grain, but in demanding twice the same duty, upon the same *medium*, both of them upon the precise same *cause* and *account*, which is not only improper, but truly inconsistent.

"The Lords found the grain growing within the barony of Kinross cannot be liable for thirle to the mill of the barony, both as *grana crescentia*, and *invecta et illata*."

Rem. Dec. v. 1. *No.* 29. *p.* 62.

1723. *December.*

The HEIRS of RUSSEL of Gartness, and MORE, their Assignee, *against* WADDEL of Easter Moffat.

No. 69.
Implied discharge of a thirlage.

The pursuers insist in a process of abstraction against the said Waddel of Easter Moffat, and as their title produce a disposition from Anna Duchess of Hamilton, in October, 1657, not only of the mill of Gartness, with the multures and sequels, but *per expressum* disponing the multures and sequels of several tenements of lands, as thirled and astricted to the mill of Gartness, and, amongst others, the multures and sequels of the lands of Easter Moffat. It was pleaded for the defender, That he derived right by progress from Cunningham of Gilbertfield, who, as appears by the transumpt of a charter from the family of Hamilton, in the year 1611, had the right of the lands of Gilbertfield, whereof Easter Moffat was a part, "Tenendas per omnes rectas metas prout jacen. in longitudine et latitudine, in omnibus ædificiis, molendinis, multuris et eorum sequelis, &c. reddendo denarium nomine albæ firmæ, si petatur tantum, pro omni alio onere." And they contended, That their authors having a charter *cum molendinis et multuris* in the *tenendas*, and likewise bearing in the *reddendo* a blench-duty *pro omni alio onere*, long before the disposition of the lands of Gartness and mill, this imported

a liberation and discharge of any former astriction; and therefore the astriction of the lands of Easter Moffat, by the disposition, charter, and infeftment 1657, was *à non habente potestatem.* No. 69.

" The Lords sustained the defence of immunity, by virtue of the defender's charter *cum molendinis et multuris* in the *tenendas*, and a feu-duty *pro omni alio onere.*

Rem. Dec. v. 1. *No.* 51. *p.* 83.

1725. *July* 31.

SIR LAURENCE MERCER of Aldie *against* FRANCIS DRUMMOND of Hallhole.

No. 70.

In a declarator of thirlage of the lands of Hallhole to Sir Laurence's mill of Littleour, the Lords found the lands astricted to the said mill: But as to the services, there being only a proof of Hallhole's assisting in bringing home the millstones, he therefore contended, That he was free from the other services, such as supporting the mill-house and dam-dikes.

It was answered; That the defender ought to be liable to all the usual services, as the legal consequence of the astriction, though the heritor might not have called the sucken to every particular service.

The Lords found, That the heritor of the mill had, in consequence of the astriction, right to the mill-services; and found the carriage of materials for supporting the mill-house was a natural service, as well as supporting the dam-dikes and carrying millstones, although the heritor might not have called the sucken to that particular service for the space of forty years.

Act. *Ro. Craigie.* Alt. *Pat. Leith.* Clerk, *Gibson.*

Edgar, p. 205.

1731. *February.* LOCKHART *against* PATERSON.

No. 71.

A clause of thirlage, astricting " the hail grindable grains growing upon the lands," was not found equivalent to a thirlage of *omnia grana crescentia*, importing only, that no part of the defenders' grain is to be grinded by them at any other mill than the pursuer's, and that all necessaries for the family, or for payment of the master's or superior's rents, in so far as payable in meal, is to be grinded at the pursuer's mill.—See APPENDIX.

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