to go to any mill the heritor pleased, as appeared from tacks produced from 1686 downwards,—4thly, that the pursuer first founded his claim of thirlage on the defender's rights, and when he failed in that, produced a bond of thirlage as old as 1645, never till then heard of, and which upon report the Lords once found null, and afterwards only sustained it upon a proof of possession conform,—and 5thly, that they thought him so far *in bona fide* as to find him not liable in the expenses of process;—for they thought he should have continued going to the mill till the point had been determined,—*sed quidam renit. inter quos ego*, 2dly, They found the miller bound to carry the victual to the mill upon his own horses, and to send as many horses as are commonly kept in the mill for that use, and the defender bound to lay the loads on the horses.

No. 6. 1740, Dec. 19. MILLER OF WATERSHAUGH.

IN a thirlage of grounds limited expressly, both by the millers and feuars charters, to corns ground for the sustentation of their families,—the Lords notwithstanding found, that farm meal, payable by the tenants to the now heritor, though living without the thirl, must be grounded at that mill, *(me quidem renit.)*

No. 7. 1741, Nov. 19. BRUCE *against* COLONEL ERSKINE, &c.

IN this process, several points worth observing were determined: 1st, The pursuer's infeftments in the mill from the Abbots of Culross, specified indeed all the lands in question, but in such a way as led us to think some of them were only outsucken, and not thirled, for the tenants of the haill lands were bound for a peck for a boll of insucken, and one peck for six firlots of outsucken, without telling what lands were insucken and what lands were outsucken. Now Kincardine, Lurg, &c. paid the 21 peck which was less than the insucken, and more than the outsucken, yet the constant immemorial use of coming to the mill being proved, the lands were found astricted, but only at the 21 peck of multure; 2dly, immemorial use being also proved of paying out of Kincardine, and some other lands, one firlot of bear yearly for every malt barn, how soon the same was built, only none was paid when they did not malt for a whole year, this dry multure was also sustained out of these lands where that custom was proved, and that for barns built or to be built. Some of us indeed (Kilkerran) was against the interlocutor for barns to be built, but agreed as to barns already built;—but as the interlocutor was agreeable to the proof, so it seems impossible to distinguish betwixt barns built and to be built, because there can hardly occur a prescription as to any one malt barn, since few of these country malt barns last much more than 40 years. 3dly, We found the superior's feu-duty on oats not astricted. 4thly, Some of the lands mentioned in the charter never came to the mill, but paid a small dry multure in bear;—and there was also in the charter a general mention *aridæ multuræ*, without saying out of what lands,—and those lands we found no further astricted than for payment of that accustomed dry multure. 5thly, The lands of Balgownie in general were thirled by the charter, and the lands passing by that name were still in use of bringing their oats to the mill, and paying insucken multure; but some parts of that tenement, viz. Wester Drumhole and Bogside, by the proof, immemorially did not come to that mill;—yet we found they had not prescribed an immunity, since Balgownie

part (and the special part) of that tenement, and belonging to the same heritor, still came to the mill. 6thly, Some of the lands, which were clearly thirled as to their oats, and also were in use to bring what bear and peas they used in their families, for which they paid insucken multure, paid also a dry multure in bear, though a small one, whereas other lands in the same circumstances paid no such dry multure. The question was, Whether the bear of both, or of either of these was thirled? And we were all clear that this last class that paid no dry multure was thirled, but thirled only for what they used in their families. But as to the lands that paid the dry multure, we were divided. Some thought the dry multure must be instead of the thirlage of bear, particularly the President. Others again thought, since they were in use of bringing their bear thither, paying insucken multure, that behoved to be in consequence of thirlage; and upon the vote this last carried. 7thly, The measures by which the multures and miller's dues were paid were sustained according to the proven use, notwithstanding complaints had been made. 8thly, The lands found liable only for dry multure and no further astriction, were found not liable for any services, since none had ever been performed. But though it was proved that some others of the lands had never paid any services, yet the sucken having paid the services, so that the services were always performed to the mill by one or other, that was found sufficient to preserve the services of the hail sucken, so as none of them could prescribe an immunity, like the payment of an annualrent out of one or more tenements liable.

No. 8. 1742, Feb. 17. A. *against* B. (BREWHOUSE *against* ROBERTSON.)

A CLAUSE of thirlage, bearing *omnia grana sua et fruges quantum serviunt pro sustentatione ipsorum domus, et omnia alia grana tam brassium et triticum, quam omnia alia grana et fruges in eorum possessione ignem et aquam patientia ad molendina nostra granaria et ustrinas de Kelso ibidem moliri, et multuras et devorias pro iisdem solvi solitas et consuetas solvere*; the question was, Whether malt imported, whether ground or unground, and afterwards brewed, was liable to the multure, as the miller alleged, or if what was malted within the thirl was so liable? And we delayed for memorials.—26th November 1741.

In the case mentioned *supra*, 26th November, We all agreed, that malt brought within the thirl ungrinded, and after consumed within the thirl, is liable to multure. But the real question was as to ungrinded malt? We agreed, that neither ground meal or flour was liable, because only *grana et segetes*, and particularly *triticum* was thirled, but *brassium* signifies grinded as well as ungrinded malt. But some of us thought that only such *brassium* was by the words astricted as could be called *grana*, or could be ground. But it carried by the President's casting vote, that all malt consumed within the thirl is liable, whether it be grinded or not, before it be imported. 17th February Adhered. Two of us did not vote. *Vide* the papers as to tholing fire and water, and as to Craig's meaning.

No. 9. 1742, July 14. LOW of Brackley *against* BEATSON of Mawhill.

I NOTICE this only because, in order to fix a rule, the Lords, instead of adhering to my interlocutor, pronounced a new interlocutor determining the import of a clause of