1741. *November* 8. WEDDERBURN *against* DURIE.

No. 81.
Effect of the clause *cum multuris* in the *tenendas* of a charter.

It is a known distinction between the import of a *tenendas* of a charter from a subject and a charter from the Crown, that a clause *cum multuris*, though only in the *tenendas*, being in a charter from a subject, is effectual to liberate from thirlage; but where the charter is from the Crown, such clause being only in the *tenendas*, is of no effect; because signatures, when passed in Exchequer, do not contain the *tenendas* other than the word *tenendas*, with an *&c.* the clause is therefore considered only the work of the writer.

But in this case the question occurred, What should be the effect of such a clause in the *tenendas* of a charter from a churchman? And though no interlocutor passed on it, it was the opinion of some able Judges, that it ought to have no more effect than in the case of a charter from the Crown, and so is to be presumed to have proceeded from inadvertency, if not in the dispositive clause.

Kilkerran, No. 6. *p.* 574.

1741. *November* 17.
BRUCE STUART of Blairhall *against* COLONEL JOHN ERSKINE.

No. 82.
Negative prescription of thirlage.

Found, That tenants of astricted lands, not having been in use to come to the mill for the space of 40 years, but having been in use to pay a dry multure for bear, immunity was acquired by the negative prescription, except as to said dry multure. But the Lords were of opinion, though they had not occasion to give a particular judgment, That where a tenement is astricted which comprehends different mailings, and where the thirlage of the tenement is preserved from prescription, though one of these mailings, part of the tenement thirled, should not have come to the mill for 40 years, the astriction of it would be preserved from prescription by the coming of the other tenants of the same tenement.—See No. 76. & 80.

Kilkerran, No. 8. *p.* 574.

1741. *December* 11. BREWHOUSE *against* ROBERTSON.

No. 83.
Thirlage of corns that thole fire and water.

A question arose upon a clause in a feu-charter, whereby the vassal was taken bound, portare sua grana et fruges quantum serviunt pro sustentatione ipsorum domus, et omnia alia grana tam brasium et triticum, quam omnia alia grana et fruges quæ ignem et aquam in eorum possessione patientur, ad molendina nostra, &c. ibidem moleri, Whether all malt brewed within the thirle was by this clause astricted?

No. 83.

And in the reasoning, the Court inclined to the construction which our modern authors, Lord Stair and Sir George M'Kenzie, put upon tholling fire and water, viz. kilning and steeping, and that the same was not to be extended to brewing and baking, which was the opinion of Craig and Spottiswood; but had no occasion to give judgment upon the import of such astriction in general, because in this case *brasium* (malt) was thirled, which having already tholled water in the proper sense when made into malt, cannot otherwise thole water than by brewing.

The thirlage was for that reason found in this case to extend to all malt brewed.

Kilkerran, No. 8. *p.* 575.

1742. *July* 14. LAW *against* BEATSON.

No. 84.
Of all grindable corns.

As the words *grana molibilia* are restrictive of *omnia grana*, it is a settled point, that the thirle may export ungrinded what they have of the growth of the lands, more than they have occasion to consume in their families; but whatever thereof they do grind falls under the thirlage.

And accordingly in this case, where, by the bond of thirlage, the lands and whole grindable corns growing thereon were astricted, it was found, that the possessors were bound to grind at the mill all the corns growing on the lands which they should either consume in their families, or grind for sale or other uses.

Kilkerran, No. 9. *p.* 575.

1743. *December* 20.

The TOWN of MUSSELBURGH *against* The MARQUIS of TWEEDALE and Others.

No. 85.
In a thirlage of grindable corns, insucken multure found due for corn brought into the thirle to be made into meal.

In the declarator of astriction pursued by the Magistrates and Town-Council of Musselburgh, against the heritors and possessors of sundry lands lying within the lordship of Musselburgh, the Lords "Found the lands of Pinkie, belonging to the Marquis of Tweedale, the lands of Newton, belonging to Wauchop of Edmonstone; the lands of Munkton, belonging to Falconar of Munkton, to be astricted to the pursuer's mills; but found, that it did not appear from the constitution of the thirlage, nor from the proof brought upon it, that the same did extend to *omnia grana crescentia*, or to *invecta et illata;* and that the defenders are only astricted for such grain of the growth of the lands as should be necessary for the maintenance of their families, or should be made into meal, flour, or malt, for sale; declaring, that it should not be lawful for the possessors of the said lands to sell their corns, and to buy meal without the thirle for their own consumpt; and that in such case they should be liable to pay multure for the meal so bought by them: And also found, that in case the possessors of the said lands should buy corn without the