No 118. are past the King's hand, or Exchequer's, they bear only *tenendas*, &c. without expressing the particular clause, which is afterwards extended at the Seals.

The defenders *alleged* further absolvitor from the multure of the teind, because that was not thirled, nor had the King any right thereto when he granted the infeftment of the mill. The pursuer *replied*, The defence ought to be repelled, in respect of the long possession *in molendino regio*, because the defenders, and their tenants, past 40 years, paid multures of all their corns promiscuously, without exception of teind; likeas there are several decreets produced, for abstracted multures of all the corns without exception. The defender *answered*, That the reply *non relevat*; for albeit long possession may make a thirlage of the King's own barony, yet that cannot be extended to other mens rights of their lands and teinds, which cannot be thirled without their own consent, or decreets against themselves called, nor do the decreets bear teind *per expressum*.

The Lords found the defence relevant, notwithstanding of the reply, except such teinds that thole fire and water within the barony; and likewise sustained the defence for the corns eaten by the defenders upon the ground, in the labouring, &c.

Stair, v. 1. *p.* 76.

No 119. Infeftment in the mill of a barony, with 40 years possession of multures, was sustained as a good title to pursue for abstractions.

1662. *January* 14. John Nicolson *against* Feuars of Tillicultry.

John Nicolson, as baron of the barony of Tillicultry and mill thereof, pursues the feuars of Tillicultry, for a certain quantity of serjeant corns, and for their abstracted multures, for which he had obtained decreet in his barony-court, which was suspended. The defenders *alleged*, That his decreet is null, as being in vacance time; 2*dly*, As being by the baron, who is not competent to decern in multures or thirlage against his vassals; 3*dly*, The decreet was without probation; the baron neither producing title, nor proving long possession; and as to the serjeant-corn, nothing could constitute that servitude but writ. The charger *answered*, That barons need no dispensation in vacance, and that baron-courts use to sit in all times, even of vacance, by their constant privilege; and that the baron is competent judge to multures, or any other duty whereof he is in possession. And as to serjeant-corn, in satisfaction of his decreet, he hath produced his infeftment as baron of the barony, which gives him right of jurisdiction, and so to have serjeants, whose fees may be constituted, and liquidated by long possession.

The Lords found the reply relevant, the charger having 40 years possession as to the multures, and the pursuer declared he insisted not for the King's feuduties in kind, but for the teind, seed, and horse-corn.

The defenders *alleged* absolvitor, for as much of the corns as would pay the

feu-duties, minister's stipends, and all public burdens, because they behoved to sell corns for satisfying of these, and in so far the corns were not their own, and so they could pay for no more corns than their own, neither could they be liable for dry multure, unless it were constituted by writ; especially seeing the charger libels not upon the defenders infeftment, or bonds of thirlage, but upon his own infeftment, only generally, as infeft in the mill of the barony. No 119.

THE LORDS repelled these allegeances, and sustained the decreet for all the corns except seed, horse-corn, and teind which tholled not fire and water within the thirle. See THIRLAGE.

Fol. Dic. v. 2. p. 106. Stair, v. 1. p. 80.

1665. *June* 24.

COLONEL JAMES MONTGOMERY *against* WALLACE and BOUIE.

No 120.
Thirlage found constituted by an old decree, against tenants, with 40 years possession conform, though the heritor was not called.

THE Colonel, as heritor of the mill of Tarbolton, having pursued Bouie for abstracted multures of Drumlie. It was *alleged* for Bouie and Wallace of Garricks, who had disponed to him with warrandice, absolvitor; because Wallace and his authors were infeft in the mills and multures, before the pursuer's infeftment of the mill. The pursuer *replied*, That the thirlage was constituted by a decreet *in anno* 1569, against the tenants of Drumlie therein mention. The defender *answered*, 1*st*, That the heritor was not called; 2*dly*, That it did not appear that these tenants did dwell in Drumlie Wallace, there being two Drumlies lying contiguous, one called the Dinks Drumlie, the other called Drumlie Wallace; 3*dly*, That for any possession, they offered them to prove that it was interrupted from time to time by going to their mills. THE LORDS ordained witnesses to be examined, *hinc inde*, whether the tenants in the old decreet did possess Drumlie Wallace or the Dinks Drumlie; 2*dly*, What possession the pursuer and his authors had; 3*dly*, What interruptions the defender and their authors had——Many witnesses being examined, *hinc inde*; it was clear, that since the year 1653, when Caprington the pursuer's author died, there was no possession, and there was not above 28 years possession proved before, because there was no witness of that age that could have been of discretion 40 years before the year 1653; but they found it proved, that the persons mentioned in the old decreet, or some of them, were possessors of Drumlie Wallace; and also there was a tack produced, set by the pursuer's author to one of the tenants of Drumlie, wherein it was provided, that the tenant should relieve him of the multures, and did not express what mill.

THE LORDS found the old decreet, although the master was not called thereto, was not sufficient alone; yet with a long possession thereafter, they found the same was sufficient to constitute the astriction, and found the interruptions by going to other mills were not so frequent and long but they might have