1682. *March.* EARL of CASSILIS *against* HERITORS in MAYBOLE.

No. 46.
Found, that by tholling fire and water, only kilning and cobling was to be understood, and not brewing or baking.

The feuers of the tenements of the Burgh of Maybole, being obliged in the *reddendo* of their charters, to bring all their corns, tholling fire and water, within the town, to the Earl of Cassilis their superior's mill;

The Lords found, That by tholling fire and water, only kilning and cobling was to be understood, and not brewing or baking, (though water be used in these) and that therefore the feuers are not liable to pay multure for malt, whether grinded or ungrinded: Although it was contended, that by this means the Earl's thirlage would be altogether disappointed, seeing a master that was not a feuer or thirled, (for the whole town was not thirled, but only such of the inhabitants as were my Lord's vassals) might make the malt, and the feuers buy it, and so be free; and though it was alleged, that in this circumstantiate case, where there is little or no growth, and malting not the trade of the feuers, tholling fire and water should extend to brewing and baking; and the defenders had no prejudice by buying corn, and allowing to their master the advantage others get, by grinding at his mill. But the Lords found, That though the defenders might buy made malt, and that they ought not to make it without the town, and then bring it, that being *fraudem facere domino*, yet this caution was not of any import, since it might be done by collusion that could not be well discovered. Here it was represented, that the Earl's mill was very insufficient.

Harcarse, No. 724. *p.* 205.

1684. *February* 28. M'DOWAL *against* M'CULLOCH.

No. 47.

Bolls payable to servants are not exempted from multure.

In case, at the time of the abstraction the mill of the barony be not in condition to serve, the multures will be notwithstanding due, but not the smaller duties for service.

Fount.

*** This case is No. 4. p. 8897. *voce* MILL.—Harcarse's report of this case, *eodem loco*, treats of other particulars.

1686. *February* 2.
LADY KINCARRACHY, FEUER of the MILL, *against* VISCOUNT of STORMONT.

No. 48.

The Abbot of Skoon having feued the mill with the astriction of *omnia grana crescentia* used and wont, after he had feued some lands which at the feuing of the mill were in his own mansing and parking;

No. 48. The Lords found these lands could not be reputed astricted, seeing *res sua nemini servit*; and for the same reason found, That the feu-duty of twenty chalders of oats, payable out of the feuer's other lands, was not liable to astriction, although there was a conversion in money at the vassal's option, unless a contrary custom was proved; and that they would not require forty years, but a competent number of years, being only to clear the import of the clause of astriction used and wont.

Harcarse, No. 728. *p.* 206.

1686. *December.*

The LAIRD of COCKBURN *against* The FEUERS of the TENEMENTS of DUNSE.

No. 49.
An obligation to grind at a certain mill the corn needed for family use, infers no prohibition from buying meal.

The charters of the little feuers about Dunse, and the charters of the heritors of tenements within the town, containing a clause obliging them to grind so much of their corns at Sir James Cockburn their superior's mill, as should suffice for the sustentation of their families, Sir James pursued both for abstracted multures.

Alleged for the feuers of the out-town lands: That if they grind corns at any mill, they were content to grind so much thereof at the pursuer's mill as should sustain their families; but they thought not themselves hindered, by the clause in their charters, to sell their own corns and buy meal. And as an astriction of *grana crescentia et invecta* (which is a larger servitude) doth not hinder selling, but only comprehends what tholes fire and water; far less can selling in this case of a lesser servitude be understood a contravention of the clause.

Answered: If it were allowed to humorous persons to sell their own corns and buy meal, this would take off the whole effect of thirlage; and here the astriction is considerable, being of the sixteenth corn.

Alleged for the feuers of the town tenements, That the clause could not oblige them, who had no corns growing, to buy corns and grind; but the meaning must be, that if they bought corns, they should prefer their superior's mill to another.

Answered: The clause astricting the sixteenth part, which is more than insucken multure, must import an obligement to grind.

The Lords found, That if the feuers who had no corns growing, bought corns, they ought to prefer their master's mill; but that they might buy meal as they thought fit.

Harcarse, No. 727. *p.* 206.

1686. *December.* ALEXANDER HAMILTON *against* SIR JOHN RAMSAY.

No. 50.

The Lords repelled this reason of astriction, viz. That the defenders had been in constant use of coming to the pursuer's mill, for the space of forty years, unless