No. 53. Lords, nevertheless, found, that these his lands, which had been formerly thirled to the mill of the barony, remained still thirled; and that the dismembration alone did not import immunity.

resigning and quitting the superiority can never carry a renunciation of the multures of his lands, unless the same had been particularly so expressed, or that his disposition had been *cum molendinis et multuris;* and their ceasing to be a part of the barony does not liberate him from his astriction, unless it had been so agreed; and though the lands be disponed to him *prout optimum maximum*, so is also the mill to Mr. Peter; nor is his thirlage made less than it was before. The Lords remembered what they had done in Greenock and Carseburn's case; and found Mr. William Chiesley's lands remained still thirled, and that the dismembration alone did not import impunity; and therefore assoilzied from his declarator.

Fountainhall, v. 1. *p.* 763.

1697. *July* 22. MALCOLM *against* RUTHERFORD.

No. 54. Mill-services implied.

Michael Macolm of Balbedy pursues Rutherford of Navity, and Beatson of Coulin, in a declarator of thirlage. Alleged, They acknowlege astriction, but *quoad* the small duties and the services in reparing the mill, they cannot be liable, because, by the contract of feu, they are only thirled to a peck of multure for each six firlots, and it bears no mention of any more; and these servitudes being *stricti juris*, are not to be ampliated. Answered, He opponed his own infeftment, bearing, *cum molendinis et multuris earumque sequelis*; and the small duties and services were but a pendicle and accession, unless they could say exemption, either by express paction or prescription; and it was so found, 27th February 1668, Maitland against Lesly, No. . p. . The Lords found the knaveship and other small services due as well as the multure, notwithstanding of the contracts which were neither taxative nor exclusive.

Fountainhall, v. 1. *p.* 789.

1697. *November* 18.
ROBERT GAIRDEN of Latone *against* THOMAS WATSON of Grange of Barrie.

No. 55. Teind, seed corn, and horse corn, not understood to be comprehended under thirlage of *invecta et illata*, or even of *omnia grana crescentia.*

Robert Gairden of Latone pursues Thomas Watson of Grange of Barrie for abstracted multures; for though they be not *debitum fundi*, and the tenant, is *primo loco* liable therein to the heritor of the mill; yet if the Master, either or his cf ent, upon a bond, poinds his tenants corns, he must be liable for the multure, as well as an intromitter with teinds would be to the teind master. But what if the heritor left as many corns behind in his tenant's barn yard as might pay the astricted multure? Some thought this not sufficient, seeing *omnia grana crescentia* were thirled, and consequently even what he had intromitted with. In this case, deduction being sought for horse corn and teind the Lords allowed the same, where the right of the teind was not in the heritor's person; and the seed being also claimed as a defalcation, the same was acknowleged to be regularly excepted; but here it was contended, there could be no allowance for it, because he being an exient tenant, it was no more sowed, and so could not be called seed. The Lords repelled this, finding no difference, whether the tenant staid or removed; for though it was not made use of as seed there, yet it might be sown else-

where. The next question was, If the corns paid for the Master's farm duty and rent were thirled or not? If the same (person) was heritor both of the mill and the lands astricted, in that case the farm or rent is not thirled, but when the mill belongs to one and the thirled lands to another. See 11th July 1621, Keith against the Tenants of Peterhead, No. 13. p. 15964. 14th January 1662, Nicolson against the Feuers of Tillicountry No. 119. p. 10859; and 3d January 1662, Stuart against the Tenants of Aberledno, No. 118. p. 10854. No. 56.

Fountainhall, v. 1. *p.* 795.

1698. *January* 26.

STUART of KINCARROCHIE, and OLIPHANT, his Grandmother, against GRANT of Bonhard.

No. 56.
Whether the benefit of a possessory judgment takes place in multures?

In this action, Stuart of Kincarrochie, and Oliphant, his grandmother, pursue Grant of Bonhard, for astriction, and for the bygone abstracted multures. The defender alleged, Absolvitor, because both being feus of the Abbacy of Scoon, I stand infeft in my lands *cum molendinis et multuris*, and accordingly have a mill in my own ground, and have been seven years in possession of my multures before your citation. Answered, The benefit of a possessory judgment takes no place in multures no more than in annual-rents, and other *debita fundi* and teinds; seeing it is *res incorporea et propriæ possessionis incapax*, and a servitude, whereas *res sua nemini servit.* See Stair's Institut. Lib. 4. Tit 17. Of Declarator of Servitudes; and the case in 1695, between Duff of Braco and Sinclair of Haddowmilne. The Lords sustained Bonhard's defence upon a possessory judgment. Then the pursuer alleged, that he had several decreets of declarator against the possessors of Bonhard, finding them thirled, and particularly one in 1668. Answered, These being against my Authors, I, a singular successor, was not obliged to know, and I have prescribed the benefit of a possessory judgment since the last of them. Replied, 1*mo*, Decreets of astriction need not be renewed against every heritor, but serve though the lands should pass through twenty hands, even as decreets of poinding the ground do. 2*do*, Decreet for abstracted multures against tenants, wadsetters, or liferenters, will never infer a thirlage against a proprietor not called, See 12th July 1621, Douglas *contra* The Earl of Murray; No. 113. p. 10851. and 13th July 1632, the Earl of Morton *contra* the Feuars of Muckart, No. 23. p. 15970. The Lords found this decreet of declarator stopped the septennial prescription even *quoad* a singular successor as to a possessory judgment in mill-multures. See June 28, 1636, Maxwell, No. 32. p. 10639.

Fountainhall, v. 1. *p.* 816.

1702. *November* 25. BOTHWELL *against* CLERK. No. 57.

Found, that infeftment of a miln carried the ancient thirlage along with it as a consequence, although the pursuer did not connect his right with the party who first acquired the thirlage. *Fountainhall.*

*** This case is No. 13. p. 34. *voce* ACCESSIORIUM SEQUITUR, &c.—See No. 113. p. 10851.