" The Lords found, That the pursuer has not instructed that the defenders in this cause, or the tenements in which they live, are subjected to the thirlage of *invecta et illata;* and therefore found, that the defenders are at liberty to grind their malt where they choose." No. 107.

Act. *John Dalrymple.*

G. F. *Fac. Coll. No. 38. p. 262.*

1766. *June* 26.

SIR WILLIAM MAXWELL of Calderwood *against* His VASSALS.

No. 108.
The clause of use and wont interpreted by possession.

Sir William Maxwell of Calderwood having granted many feus, several of which had existed above two centuries, thirled his vassals to his mill by a general reference of multures used and wont. This general clause was interpreted by possession to be *omnia grana crescentia*, with no other exception as to the oats, but of seed and horse-corn.

The teinds of Sir William's estate belonging to the College of Glasgow, the vassals had been in use, past memory of man, to pay to the College certain bolls of oat-meal instead of the *ipsa corpora*, which led them, as aforesaid, to bring all their oats to their superior's mill, the teind included. But coming, in process of time, to be more cunning lawyers, they formed this argument, That the family of Calderwood could not be understood to thirle to his mill the tithe which did not belong to him, but to the College; nor was it in his power to thirle that subject, had he intended it. When this matter came before the Court, it was admitted, that the College could not be barred by any agreement between Calderwood and his tenants from drawing their tithe *ipsa corpora*. But then it was contended, that while meal is paid, there is nothing to hinder the vassals from binding themselves to grind at their superior's mill the corn from which that meal is produced. That this can be done by a written contract is undeniable; and it is in effect done by a contract, when done by prescription; because prescription in servitudes rests upon no other foundation than a presumption that a covenant had actually been made.

" Found, That as the teind payable to the College of Glasgow is payable in rental bolls of meal, therefore, that the oats for said meal must be grinded at the superior's mill, and must pay in-town multure according to use and wont."

Sel. Dec. No. 246. p. 319.

1768. *December* 13.

JAMES WRIGHT, Tacksman of Milntoun-mill, *against* THOMAS RANNIE, Tenant in Huntlaw, and JAMES PRINGLE, Tenant in Limpuckwells.

No. 109.
Thirlage of victual in ge-

The defenders, by their leases, were bound to grind all their *grindable corns* at Milntoun-mill; and, for some time after the commencement of their tacks, manu-