1731. *June.* STEWART *against* WADDEL.

No. 72.

Found, in conformity with Monteith against Feuers of Abbotscarse, No. 66. p. 16009. That a feu-charter, bearing a certain feu-duty *cum omni alio onere*, although the charter bear a clause of absolute warrandice, if it do not bear a clause, *cum molendinis et multuris*, imports not an exemption from the thirlage.—See APPENDIX.

1731. *July.* M'FADZEN *against* EARL of CASSILIS.

No. 73.

An heritor who lets a tack of his mill, with astricted multures, incurs not the warrandice of his tack, though his tenants, who are astricted, be not restrained by their tacks from turning their ground into grass. Astricted multures are like teinds, a casual rent implying no restraint upon the persons subjected, to manage their grounds in what shape they please, providing it be not done *in fraudem.*—See APPENDIX.

Fol. Dic. v. 2. p. 468.

1732. *December* 16. CRAWFORD *against* HALKERSTON.

No. 74.

Heritors thirled to a mill, and who had also been in constant use of repairing the dam, and bringing home millstones, pleaded exemption from the other services, such as, the carrying materials for reparation of the mill-house, which had always been repaired by the heritor or miller, without any burden upon the sucken. And it was alleged, That the right to the thirlage being constituted by prescription, *tantum præscriptum quantum possessum.* Answered, Services are implied in the nature of thirlage, whatever way constituted. The heritor of the mill was found to have right to the services of carrying materials by the sucken, for supporting the mill-houes.—See APPENDIX.

Fol. Dic. v. 2. p. 463.

1736. *February* 17. LOCKHART of Carnwath *against* DENHAM of Westshields.

No. 75.

A clause in a vassal's charter, " bearing the vassals, and the tenants and possessors of the lands, to be astricted to the superior's mill, and to carry thereto all their grindable grains growing on these lands, which they shall happen to grind," was found to be an astriction not only of the grain grinded for the necessary use of their families, but also of all grain growing on the lands which the vassals,

tenants, or possessors, should happen to grind for other uses, they being bound to pay therefor in-sucken multure, knaveship, and bannock, as stipulated by the clause in the charter.

No. 75.

But the Lords were unanimously of opinion, That the superplus of the corns not necessary for the consumption of the families might be lawfully exported in kind, in case they were not grinded, without being liable for any multure.—See APPENDIX.

Fol. Dic. v. 2. p. 466.

1738. *November* 24. RAMSAY *against* BREWHOUSE.

No. 76.
Rule of the dimension of mill-measures.

The dimensions of the cap or dish by which a miller receives his multures or knaveship, being local, and depending on custom, long possession was found to presume the measures in use to be agreeable to the original constitution.

The like found as to knaveship, November 17, 1741, Bruce Stuart of Blairhall *contra* Colonel John Erskine, No. 82. p. 16020.

Kilkerran, No. 1. p. 572.

1739. *July* 14. LOW *against* BEATSON.

No. 77.
Possession for 40 years upon a bond of thirlage, before 1681, subscribed by notaries, only three of the witnesses being inserted.

Upon advising the petition, by which the interlocutor between the said parties of November 7, 1738, *voce* WRIT, is there said to have been kept open, with the answers thereto, it appearing, by the proof, that there had been a 40 years possession conform to the bond of thirlage, the Lords, without expressing the *ratio decidendi*, "Sustained the astriction."

Kilkerran, No. 2. p. 573.

1740. *January* 22. MAXWEL *against* STOT and Others.

No. 78.
The coming to a church-mill for 30 years presumes astriction.

The coming immemorially to a church-mill was found sufficient to presume astriction. So the case happened in fact to be, that the proof of coming to the mill was immemorial; but it was the unanimous opinion of the Court, that being a church-mill, a proof of 30 years coming had been enough, which, by act of sederunt 1612, came in place of the 13 years possession, which, at the Reformation, presumed the churchman's title.

Kilkerran, No. 3. p. 573.

*** Lord Kames mentions this case more fully, as follows:

In a process for abstracted multures at the instance of the Lord Maxwell, as proprietor of the mill of Clouden, against his feuers, the Lords, in respect the mill of