1740. *January* 22.

LORD MAXWELL *against* The PORTIONERS OF HOLYWOOD.

No. 4.

THE lands in the Barony of Holywood, which Barony pertained to the Abbacy of Holywood, coming immemorially to the mill of the Barony and paying intown multures; found sufficient evidence of their being astricted to that mill: But they would not find their coming to the mill of a Barony sufficient unless it had been a Church Barony, and many thought, that without that specialty it would not have been sufficient. (See DICT. No. 78. p. 16017.)

1740. *December* 16.

LOW of Brackley *against* BEATSON of Mawhill.

No. 5.

A SUCKENER in constant use of coming to the mill, if he abstracts, and in the issue is found astricted, he is liable for his bygone abstractions, however probable his plea of immunity might have been, and though for that very reason he should not be found liable for expenses; because he should not have inverted the use of going to the mill till he had got his immunity declared. *2dly*, Whether the miller is bound to carry the corns? he is only obliged to send such a number of horses as used to be kept at the mill, with a competent number of servants for leading them, but the suckener must furnish servants to load the horses. (See DICT. No. 77. p. 16017.)

1740. *December* 19. MILLER of Watershaugh.

No. 6.

A SUPERIOR having thirled his vassals' lands to a mill also feued out by him, and the astriction expressly limited to the corns grinded for the sustentation of their families;—notwithstanding of that restriction, the Lords found the farm-meal payable to the feuars by their tenants, thongh the feuar do not now reside within the thirl. (See DICT. No. 80. p. 16019.)

1741. *November* 19.

BRUCE of Blairhall, *against* COLONEL ERSKINE, and Other Feuars of Shirriffsmill.

No. 7.

THE pursuer's infeftment in the mill from the Abbots of Culross gave the multures of a great many lands therein, paying a peck each boll of in-

No. 7. sucken, and a peck for six firlots of outsucken, without distinguishing what lands were insucken and what were outsucken. One parcel of lands had paid immemorially the one and twentieth peck, *i. e.* less than the insucken and more than the outsucken; yet that parcel was found astricted, but only liable for the one and twentieth peck.

2do, Some of that same parcel and some other lands, paid immemorially one firlot bear yearly of dry multure for each malt-barn how soon it was built; but when malting was discontinued for a whole year for any one barn, the firlot was not paid for that barn that year. This dry multure was also found due out of those lands where that immemorial custom was proved for all malt-barns built and to be built.

3tio, The feu-duty of some of those lands payable to the superior, who came in place of the Abbot, being payable in oats, these oats were found not thirled.

4to, The charter mentioned also *aridas multuras* without specifying out of what lands, and some of the lands were in use of paying a small dry multure in bear, but never came to the mill, and these lands were found astricted for the dry multure allenarly, and no further.

5to, Of one of the tenements mentioned in the charter, the principal part of it, and which still retained the same name, was still in use of coming to the mill and paying insucken multure; but some of the farms of that tenement, though belonging to the same heritor, immemorially did not come to the mill; yet these last were found not to have prescribed an immunity, since the principal part, and belonging to the same heritor, was in use of coming.

6to, Two parcels of land that were in use of bringing all their oats, and paying insucken multure, were also in use of bringing what bear and peas they consumed in their families to the mill, and paying therefore insucken multure; but one parcel of them paid also a dry multure in bear, and the other did not. This last parcel was found also astricted for the bear that they consumed in their families, but for no more bear; but the Court was divided as to the other parcel that paid also a dry multure in bear, whether the bear was at all astricted further than that dry multure, or if they behoved also to pay multure for what they consumed in their families, and if that was astricted to be brought to the mill; and it carried that it was astricted.

7mo, Complaints had often been made of the measures by which the multure was exacted. But they being proven to have continued immemorially the same, notwithstanding the complaints, they were sustained and approven.

8vo, The lands that paid only a dry multure immemorially had not paid any services to the mill; but of the other lands found liable to come to the mill, some had paid services, and others had never paid any as far as the witnesses remembered. But the mill had always been served by one or other in the sucken, and that was found sufficient to preserve the services as to the whole that were astricted to come to the mill, and to prevent any of them from prescribing an immunity; as an annualrent payable out of different tenements. (See DICT. No. 82. p. 16020.) No. 7.

1742. *February* 17. A. *against* B.

No. 8.

A CLAUSE of thirlage of a Burgh of Barony, and likewise of the adjacent lands all feued out, being in these terms; "Omnia grana sua et fruges "quantum serviunt pro sustentatione ipsorum domus et omnia alia grana "tam brassium et triticum quam omnia alia grana et fruges in eorum pos- "sessione ignem et aquam patientia ad molendina nostra granaria et ustri- "nas de Kelso ibidem moliri, et multuras et divorias pro iisdem solvi soli- "tas et consuetas solvere;"—the question was, as to malt imported into the thirl whether grinded or ungrinded, and afterwards brewed within the thirl; and it seemed agreed, that neither meal nor flour imported was liable to pay multure, because they were not *grana* nor *segetes* nor *triticum*; and it was also agreed, that malt imported ungrinded and afterwards consumed within the thirl was liable, for that was properly *brassium*, and might properly enough be called *grana*; but the doubt was as to malt that had been grinded before it was bought or imported into the thirl, but afterwards brewed within the thirl, and that was found also liable to pay multure, 10th December 1741.—Adhered to after bill and answers, 17th February 1742. *Vide* these last papers as to the import of tholing fire and water, and particularly as to Craig's *ustrina vel clibano*. *Vide contra* Harcarse, (DICT, No. 46. p. 15987.)

1742. *July* 14. Low of Brackley *against* BEATSON of Mawhill.

No. 9.

MULTURES of all grindable corns growing on the lands, found to mean all corns growing on the lands necessary for the use of their families, or that they shall happen to grind for sale or other uses, agreeably to the above decision, July 1736, in Carnwath's Case, No. 2. (See DICT. No. 84. p. 16021.)