1742. *July* 2. ——— *against* ———.

A MILL was feued out with the multures of the barony as possessed by Patrick ———, formerly tenant of the mill. The question arose about the mains, Whether it was astricted by this clause, and to what extent. The fact was, that, during the possession of Patrick ———, the proprietor of the mill had his mains in his own hands, and sometimes sent his oats to the mill, and paid insucken multure for them, at other times he sold his own oats and subsisted his family upon his farm meal; but his wheat and malt he always grinded at the mill of the barony, and paid the ordinary in-town multure.

It was contended, That, now the mill and the mains belonged to different proprietors, the same use of payment should continue, and the possessor of the mains should be liable to pay multures for all the corns he should actually grind; which would be considerable, as the mains was set to a tenant. To this it was ANSWERED, That the setting or not-setting of the mains could not alter the nature of the thirlage.

The Lords found that there was no thirlage at all.—*Dissent. Elchies et Drummore.*

1742. *July* 20. HUNTER *against* HUNTER.

THE case here was, an adjudication was led upon a special charge to enter heir, but the lands were not filled up in the letters of charge: this was found to be a nullity in the adjudication. Then the question came, whether the heir afterwards entering in due course of law, did validate the adjudication? It was argued, for the affirmative, That the right the heir acquired by his entry was a *jus superveniens auctori*, which accresces to the adjudication or legal disposition, in the same manner as it would do to a voluntary disposition.

2*do*, The heir entering at any time, must be reputed to have been entered at the time of the death; because, *fictione juris*, the time of the death is conjoined with the *tempus aditionis*, and therefore the adjudication must be considered as if he had been entered at the time it was led.

To the first it was ANSWERED,—That the maxim, *jus superveniens auctori accrescit successori*, does not apply to adjudications in their present form; for this reason, that they do not imply warrandice, which is the principle of accretion in our law. Anciently, indeed, when apprising was a sale of a part of the lands effeiring to the debt, the debtor was bound in warrandice, as appears from our ancient law-books and practicks, and, at present, in special adjudications, the judge determines what warrandice the debtor shall give; but it is otherwise in general adjudications where the debtor's whole estate is adjudged for the debt.

N.B. This was Elchies' reasoning.

2*do*, To the second it was ANSWERED,—That the fiction of the Roman law was never carried so far with us.