

COALSTON. For the vassals. No act or deed of an heritor can astrict a tenement to which he has no right.

GARDENSTOUN. Immemorial possession regulates thirlage. No argument shall convince me of the contrary, nor shall any argument convince me against an express stipulation.

PRESIDENT. My doubt is on account of teind and stock being *separata tenementa*; and, so standing the case, I cannot presume any thing from possession.

Diss. Auchinleck, Coalston, Kennet, Ellicock, President.

1766. *July 30.* CAPTAIN CHARLES BARCLAY MAITLAND of Tillicutry and OTHERS, Heritors of that Parish, *against* ROBERT MAY, Feuor in Drimmie, and OTHERS, also Heritors of that Parish.

KIRK-YARD.

The Court of Session, as Commissioners of Teinds, have no power to fix a New Church-Yard for a Parish.

THE pursuers insisted, in an action before the Lords-Commissioners for valuation of teinds, for transportation of the Church of Tillicutry, and concluding "that the new church-yard should be the burial place for the said parish in time coming, and that the inhabitants should be decerned and ordained to bury in the said new church-yard in all time coming."

On the 30th July 1766, "the Lords decerned in the transportation of the church, but assoilyied from the conclusion as to the church-yard."

The President thought that the Court had no power therein.

1766. *August 1.* MAGISTRATES of EDINBURGH *against* ROBERT GARDINER, Esq. late Commissary of the Army in Scotland.

CAUTIONER.

One, who had for some time been Treasurer of an Hospital, being called upon by the Managers to find caution, and a cautioner having become bound for him "that he shall make just compt of the revenue of the said Hospital so far as the same shall be introritted with by him,"—*found* that the cautioner was liable for a deficiency previously existing.

THE Magistrates and Town-Council of Edinburgh are governors of the Trinity Hospital. In 1762 they appointed George Pitcairne treasurer of the hospital, but neither exacted caution from him nor any regular obligation to account. The treasurer of Heriot's Hospital proved bankrupt, and, as he had