yet there was no proof of immunity for 40 years; and therefore they adhered to their interlocutor of 16th January last. They thought also that payment to any within the thirl, though as a gratuity, interrupted the prescription of immunity as to all within the thirl, like payment of annualrent out of one tenement where the annualrent is constituted upon more tenements.—25th June 1736.

The Lords adhered, with the addition, that in case of want of service in the terms of the former interlocutor they may carry the whole corns to another mill, and found no more due to the miller than the multure in the former interlocutor.—1st July 1736.

No. 3. 1736, June 19, Dec. 15. EARL OF WIGTON *against* THE TOWN OF KIRKINTILLOCH.

WE seemed to agree that there was here no prescription to astrict the *invecta et illata*, either in general, or such as are consumed in the barony; and we thought that it resolved in a question in law, Whether a general astriction imports an astriction even of *invecta et illata*, at least in so far as is necessary for the families or consumers, especially where there is a burgh of barony in the thirl. And we found that the *grana crescentia* necessary for the use of the families are astricted. 2dly, That they cannot sell these and buy others in their place, otherwise those imported are astricted. 3dly, That ground-meal or malt bought and imported, and consumed by the inhabitants, is not thirled. 4thly, That grain imported, and afterwards ground and consumed, is thirled. 15th December, The Lords Adhered. (See Note of No. 2.)

No. 4. 1740, Jan 22. LORD MAXWELL *against* PORTIONERS OF HOLYWOOD.

THE Lords, on consideration of the rights, that it appeared that the mill belonging to the charger, as well as lands of the suspenders, were part of the ancient Barony of Holywood, belonging to the Abbacy of Holywood, and having also considered the proof, found the defenders astricted, and remitted to the Ordinary to proceed accordingly. But they would not determine upon the footing of the Ordinary's interlocutor, that it was the mill of a barony;—which many of us thought not sufficient; but that it was a mill belonging to Churchmen. This indeed is against the decision 17th July 1677, Ross against M'Kenzie, which I shewed them, and was read. (DICT. No. 125. p. 10,866.) But we thought it not law.

No. 5. 1740, Dec. 16. LOW of Brackley *against* BEATSON of Mawhill.

IN a question of bygone abstractions, the Lords had such a regard to the constant possession, that in the process they found the defender liable for bygone abstractions from the time he discontinued going to the mill in 1730 to the commencement of the process in 1735 and thereafter;—notwithstanding it was as easy a multure as that the defender paid at other mills, or as he could have got his corns ground for, so that it was really no more than the *merces operarum*,—and 2dly, that the defender had reason to believe he was not thirled, there being no such servitude in his charters, or any other writing known to him,—3dly, that he and his predecessors had been in use to take their tenants bound

to go to any mill the heritor pleased, as appeared from tacks produced from 1686 downwards,—4thly, that the pursuer first founded his claim of thirlage on the defender's rights, and when he failed in that, produced a bond of thirlage as old as 1645, never till then heard of, and which upon report the Lords once found null, and afterwards only sustained it upon a proof of possession conform,—and 5thly, that they thought him so far *in bona fide* as to find him not liable in the expenses of process;—for they thought he should have continued going to the mill till the point had been determined,—*sed quidam renit. inter quos ego*, 2dly, They found the miller bound to carry the victual to the mill upon his own horses, and to send as many horses as are commonly kept in the mill for that use, and the defender bound to lay the loads on the horses.

No. 6. 1740, Dec. 19. MILLER OF WATERSHAUGH.

IN a thirlage of grounds limited expressly, both by the millers and feuars charters, to corns ground for the sustentation of their families,—the Lords notwithstanding found, that farm meal, payable by the tenants to the now heritor, though living without the thirl, must be grounded at that mill, *(me quidem renit.)*

No. 7. 1741, Nov. 19. BRUCE *against* COLONEL ERSKINE, &c.

IN this process, several points worth observing were determined: 1st, The pursuer's infeftments in the mill from the Abbots of Culross, specified indeed all the lands in question, but in such a way as led us to think some of them were only outsucken, and not thirled, for the tenants of the haill lands were bound for a peck for a boll of insucken, and one peck for six firlots of outsucken, without telling what lands were insucken and what lands were outsucken. Now Kincardine, Lurg, &c. paid the 21 peck which was less than the insucken, and more than the outsucken, yet the constant immemorial use of coming to the mill being proved, the lands were found astricted, but only at the 21 peck of multure; 2dly, immemorial use being also proved of paying out of Kincardine, and some other lands, one firlot of bear yearly for every malt barn, how soon the same was built, only none was paid when they did not malt for a whole year, this dry multure was also sustained out of these lands where that custom was proved, and that for barns built or to be built. Some of us indeed (Kilkerran) was against the interlocutor for barns to be built, but agreed as to barns already built;—but as the interlocutor was agreeable to the proof, so it seems impossible to distinguish betwixt barns built and to be built, because there can hardly occur a prescription as to any one malt barn, since few of these country malt barns last much more than 40 years. 3dly, We found the superior's feu-duty on oats not astricted. 4thly, Some of the lands mentioned in the charter never came to the mill, but paid a small dry multure in bear;—and there was also in the charter a general mention *aridæ multuræ*, without saying out of what lands,—and those lands we found no further astricted than for payment of that accustomed dry multure. 5thly, The lands of Balgownie in general were thirled by the charter, and the lands passing by that name were still in use of bringing their oats to the mill, and paying insucken multure; but some parts of that tenement, viz. Wester Drumhole and Bogside, by the proof, immemorially did not come to that mill;—yet we found they had not prescribed an immunity, since Balgownie