

but it appeared that he knew, before the arrestment, that Mr Maule was only a *Trustee*.

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1743. *June 21.*

RANKIN *against* MORGAN.

THE Lords found, that a proprietor of a mill could not hold a multure court upon lands that were within the thirle but did not belong to him; and therefore reduced the decret for abstracted multures *in totum*, and would not so much as turn it into a libel. The *ratio decidendi* was the common principle of law, *Extra territorium jus dicenti impune non paretur*; and some of their Lordships carried it so far as to say, that an astriction to a mill gave no jurisdiction at all over another man's tenants, who, for that reason, they did not think would be obliged to answer to a court held upon the proprietor of the mill's own lands.

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1743. *June* . CRAFTSMEN of CANONGATE *against* HERITORS.

THE burgh of the Canongate (which is a burgh of barony, holding of the town of Edinburgh,) has been in use, time out of mind, to pay part of the cess of the town of Edinburgh, notwithstanding they have not the benefit of the act of communication of trade, and are not entitled to any of the privileges of the town of Edinburgh. The origin of this custom is not known, but this was not the controversy here. Of this proportion of the cess of Edinburgh, the craftsmen and mechanics of the Canongate had been in use to pay a share with the heritors of houses; this they thought a great hardship, considering that they had no privileges of trade, and therefore they brought a declarator of immunity, wherein they concluded against the heritors that they should be liable for the whole cess. But the Lords, in respect of the constant custom, time out of mind, presumed there had been some ancient contract or agreement betwixt the heritors and mechanics, and therefore assoilyed the defenders. Actores, James Balfour, Alexander Lockhart.

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1743. *June* . THEODORE EDGAR *against* JAMES MAXWELL.

THIS was a question about making up titles to a tenement within burgh. The fact was this: In the 1595, the Magistrates and Town Council of Lochmaben grant a charter of the mill and mill-lands of Lochmaben to William Johnston, "*tenendas et habendas, de domino nostro rege, et de balivis et consulibus dicti nostri burgi, in libero burgagio, feudifirma et hæreditate in perpetuum*;" and the red-dendo bears L.40 Scots annually to the town. In the year 1656, John John-