1739. *November* 7.

Sir DAVID DALRYMPLE *against* HAY of Drummelzier.

No. 3.

IN dividing a commonty betwixt a Barony on the one part, and lands of another heritor having an interest in the commonty; in the division, the whole Barony ought not to be valued, unless the whole pastured upon that common; but only the particular farms or towns, that are proven to have been in use to pasture upon it: Which rule had also before been followed in the division of the common of Biggar, betwixt the Earl of Wigton and Lockhart of Carnwath, and their feuars. (No. 2.)

1740. *February* 1. Sir ROBERT STEWART *against* His VASSALS.

No. 4.

Commonty cannot be divided at the instance of the sole proprietor against those having only servitudes of pasturage upon it.

No process for a division of commonty lies on the act 1695, at the instance of the proprietor of the common, against those having servitudes of pasturage on it, where there is no common property, but the whole property is in one, and the rest have only servitudes of common pasturage, though these servitudes are so large as to exhaust the whole use of the superfice. (See DICT. No. 8. p. 2469.

1740. *February* 2.

DUKE of DOUGLAS and Mr JAMES BAILLIE *against* BAILLIE of Littlegill.

No. 5.

A COMMON having been immemorially possessed by a certain definite number of soums for each proprietor; and though in 1719 the tenants finding the ground overstocked, restricted the soums to a lesser number, yet still they observed the same proportions among the heritors;—notwithstanding thereof the Lords found that the valuation of the several heritors' lands behoved to be the rule of division according to the act of Parliament, and not the proportion of soums that each heritor was allowed to pasture,—where the preceding decision, Andrew Tennent, (No. 1.) was quoted and answered. (See DICT. No. 9. p. 2474.)