1739. *November* 6. SIR DAVID DALRYMPLE *against* HAY of Drummelzier.

No 7.
Found in conformity with the preceding case.

IT has been found in February last in the division of the muir of Biggar, that where one tenement of a barony only has been in use of pasturing upon a common muir, the heritor of the barony was, in a division, entitled only to a share of the muir corresponding to the value of that particular tenement, much against the opinion of some of the Lords, who urged, that the heritor of the barony should be entitled to a share corresponding to the value of the barony, in so far as it was contiguous to the tenement that had been in use to pasture. When this case between Sir David Dalrymple and Drummelzier came in, the very same question again occurring, THE LORDS, without reasoning, gave the same decision.

Kilkerran, (COMMONTY.) *No* 4. *p.* 126.

1739. *December* 21. & 1740. *February* 1.
SIR ROBERT STEWART *against* The FEUARS of TILLICOULTRY.

No 8.
There lies no action upon the act 1695, for dividing a commonty, where the right of property is in one, and only a right of common pasturage in others.

SIR ROBERT, as proprietor of the hills of Tillicoultry, brought an action upon the act 1695, against the feuars who stood infeft in their respective lands, with a right of pasturage on these hills.

For the pursuer it was *urged*, That the act 1695 was a very useful and valuable law, tending greatly to advance the public interest; therefore it ought rather to be extended than restricted; consequently, if there were any dubiety anent the meaning thereof, the words should be constructed in as large a sense as they could possibly admit of. In the *first* place, it can admit of no doubt, that in the general and common way of speaking in this country, by commonties are meant any large pieces of ground that have been possessed promiscuously, by the neighbours about, in common pasturage, without any distinction as to the nature of their rights, whether the adjacent heritors have a joint interest, as of common property, and the rest the servitude of common pasturage; and words used in laws are to be taken in the sense that they are commonly used throughout the kingdom, otherwise no law would be intelligible, but the legislature behoved to define every term that is used in law. *See* Craig, lib. 2. Dieg. 8. § 33.; Stair, b. 2. tit. 7. § 14. And indeed, if the matter is seriously considered, it must be obvious, that this act was chiefly intended to authorise the division of such commonties as this: For, *first*, The reason of the law for preventing the discords that arise about commonties, applies to the case of this, as well as others; nay, there are many more where the rights are of the nature of the one in question, than of those consisting of a joint property: Hence it ought to be presumed, that this general law was calculated so as to comprehend the case of the commonties that were most frequent in Scotland; otherwise it could