1744. 9th July 1746, Altered the first, and found them liable for *invecta et illata*, but only as to malt consumed within the town, but not oats; adhered as to the second.

No. 2. 1745, June 13. MURRAY *against* M'CULLOCH.

THE question was the proof of the constitution of a thirlage, where there was no title, only decreets of the mill court from 1697, and some years after, but by what authority these courts were held did not appear. The use of coming to the mill had been discontinued from the year 1727, and there was proof of coming to the mill for upwards of ten years before the 1727, and paying not only in-town multures (which were very easy, the 25th part, and by the proof less than the out-town by the difference of shilling seeds) but also of paying all sorts of mill services, paying thatch, and paying money for one of the two mill-stones, the master paying the other. The Lords *nem. con.* found the thirlage constituted; and Arniston thought that paying in-town multures was pretty near the same with paying dry multures.

TITLE TO PURSUE.

No. 1. 1752, June 30. BRYSON, &c. *against* WILSON, &c.

THE petitioners, and other seceders, having bought ground to build a meeting-house on it, chose the defenders trustees, in whose names the rights were taken, who granted back-bond to denude in favour of Mr Adam Gibb, their then Minister, and his successors in office, and the persons who had contributed to the purchase, or in favours of any person, whom Mr Gibb and his successors and other members of the session, and the said contributors, shall by plurality of voices nominate, in a meeting to be called for that purpose and intimated from the pulpit of said congregation at least ten days before the meeting. This congregation afterwards split on the subject of the burgess-oath, and those trustees differed from Gibb, who was against the oath, and therefore wanted to denude them of the trust, and for that end intimated a meeting of the session and contributors, and there, by a great majority, other trustees were chosen, who sued the other trustees, Wilson and Bayne, to denude. They objected to the pursuer's title, that the associate congregation or session was no body-corporate or politic that could sue or be sued, or chuse a trustee to sue for their behoof. Answered: That any number of persons may chuse a trustee to take a right in the name of that trustee for their behoof, and that person may be bound to denude to any other trustee to be chosen by them, and therefore though the associate congregation be not a name known in law, yet the persons contributors might sue either in their own name, or in name of any trustee to be chosen by them, as the inhabitants of a village might do, or the free masons, or the musical society, or a company and society of merchants, as the proprietors of the glass work; and that the pursuers were chosen in terms of the back-bond by a majority of contributors. I

repelled the objection, and sustained the title. But on a reclaiming bill and answers, the Lords this day, (30th June 1752) found that the pursuers had no legal title to pursue, their constituents being no legal congregation. For the interlocutor were Minto, Drummore, Justice-Clerk, Shewalton, Leven, and President. Against it were Kames, Murkle, Woodhall, and I. 15th November, The Lords adhered, *renitent.* Milton, Kilkerran, Woodhall, *et me;* and 2d January 1753 refused a bill of suspension of the builders against Gibb to deliver up the key.

No. 2. 1752, July 8. POLLOCK, &c. *against* MAXWELL, &c.

POLLOCK, and others, in whose names ground had been purchased for a meeting-house for the congregation, sued for seat rents, and obtained decreet, and a like decision happening among them, as is mentioned *supra*, 30th June, Bryson against Wilson. The decreet was suspended, for that the congregation had changed the managers; which coming before Dun, he found, that after the chargers should be reimbursed of the sums laid out by them, they ought to denude to the congregation. But upon a reclaiming bill and answers, we found the original trustees had the right of administration, and in case of a sale, the price to be divided among the contributors, and that the pretended congregation had no action. But here there was no obligement to denude, as in the former case.

See No. 1, *voce* REDUCTION.

TRUST.

No. 1. 1733, Dec. 12. ANDREW SPREUL *against* HUGH SPREUL CRAWFURD.

THE Lords found no trust, in terms of the act of Parliament, of the disposition;—*sed vide* 15th July 1741, *inter eosdem.*

*** The note relative to this second question between these parties is No. 30, *voce* ADJUDICATION.

No. 2. 1734, Jan. 16. MR CHARTERIS *against* THE CREDITORS OF MERCHIESTON.

FOUND that the expense of diligence and ranking cannot burden the collector. But found that the common expence for behoof of all the creditors must be allowed.