1755. *June* 18. LORD KILKERRAN *against* BLAIR.

THIS was a question about the extent of a thirlage of lands, that had been feued out by the abbacy of Crossreule, with a clause of astriction in these words, "*reddendo inde annuatim multuras et sequelas dictarum terrarum.*" In order to fix the extent of this thirlage, a proof was taken of the custom, by which it appeared that the tenants had been in use to carry all their corns to the mill, and to pay about an eighth part by way of multure; but these corns at that time were no other than oats and bear, and no more than were sufficient for the consumption of the tenants' families. Hence it was contended by the defender, 1*mo*, That this heavy thirlage should be restricted to these grains, so as not to comprehend pease, wheat, &c. 2*do*, That it was only of what was necessary to be grinded for the use of the tenants, and would not go the length of *omnia grana crescentia*. The Lords unanimously overruled both these defences, and found the restriction to be of *omnia grana crescentia*. It is believed they would have given the same judgment, merely upon the words constituting the thirlage, without any proof at all of the custom, because an astriction of the lands is an astriction of the corns growing upon the lands, as Spottiswood hath explained it under the words *milns* and *multures;* and so it is said in the papers to have been explained by the Lords in the noted case of *Waughton*, where a charter, in general words, astricted, to the mill of Linton, *terras de Ford*.

1755. *June* 20. CREDITORS of LORD CRANSTON *against* SCOTT.

THE said Scott had a tack from my Lord Cranston, upon which he was in possession, and of which he got a prorogation three years before it expired. Soon after this prorogation my Lord Cranston's creditors adjudged his estate, and upon their adjudications obtained a sequestration, and possessed the estate by their factor before the new tack could take place. The question was, whether this new tack was good against the creditors?—And the Lords decided this general abstract point of law, that a tack without possession is not good against a creditor adjudging and entering to possess before the tenant; and they farther found, that the possession upon the old tack could not be ascribed to the new, and that there could be no possession on the new till the old was expired; contrary to what had been formerly decided.

1755. *June* 26. ——— *against* ———.

[Kaimes, No. 88.]

THE question here was, Whether bygone feu-duties, due by the vassal, be-