1672. *June* 21. SANDILANDS *against* the EARL of HADDINGTOUN.

A PIECE of land, which was a part of the barony of Torphichen, and astricted to that mill by a bond of thirlage, being acquired by the Lord Haddingtoun, and disponed to Coustoun, *cum molendinis*, &c. in the *tenendas*, and with absolute general warrandice; and Couston being distressed, recurred upon the warrandice;—the Lords found, That, although the clause *cum molendinis*, &c. in the *tenendas*, might empower the buyer to build a mill, and would exeem him, if the disponer had right to the mill of the barony to which it was anciently astricted, yet, seeing the buyer could not but suppose, that these lands, as all lands, were astricted to the mill of the barony, (to which the disponer had no right,) and did not in the warrandice specially provide against the astriction; the Lords found it did not fall under the general warrandice.

*Page* 294, No. 1.

---

1672. *December*. BANDONER *against* COLLIER.

ONE Mr Bandoner being infeft in the mill of a barony by the abbot of Culross, with the multures and astrictions thereto belonging in general, without the words, *omnium bonorum crescentium in terris*, &c. pursued one Collier for the abstracted multures of barley. Alleged for the pursuer, That the defender being thus astricted, and having no clause *cum molendinis* in his infeftment, use of coming to the mill with any corn, as oats, was sufficient to save the prescription of liberty for the barley, although they were not able to prove that barley came, or that there were abstracted multures recovered for barley, this being the mill of the barony. The Lords generally inclined to think, that, astriction being only general, and not *omnium granorum*, &c. the possession of grinding oats was not enough to prove the use of grinding barley and other grain; although it were enough if the astriction was *omnium granorum crescentium in terris* of the lands astricted; as was found in Waughton's case, June 26, 1635,—December 1672. The like in Oliphant of Condy against Oliphant of Rossy, July 4, 1673, where the defender, by his charter, was astricted to bring *omnia grana crescentia, semine et decimis exceptis.*

*Page* 294, No. 2.

---

1673. *June* 10. LADY STRATHNAVER *against* RENTON of BILLIE.

FOUND that inhibition did interrupt tacit relocation, so as the intermitter with the teinds would be liable for a fifth of the rent for all years after the inhibition; and found that the defender having, as tacksman, intromitted with, or led any

part of the teind before inhibition, he might lead the rest of it after the inhibition; and, for that year, the relocation was not interrupted, unless it were alleged that the tacksman did, *dolose*, lead the said part before the usual time of leading, thereby to prevent the inhibition. And if *dolus* were proven, the intromitter would be liable in a spuilyie; otherwise only for the tack-duty.

*Page* 295, No. 8.

---

1674. *February* 3. Blair *against* the Parishioners of Kingarth.

Kincatten, having a tack of the pasturage-teinds from one of the prebends of the chapel-royal of Stirling, being pursued for the vicarage, excepts, that he had been in possession for many years to lift the vicarage, as a pendicle of the parsonage-teinds, and that it was the custom of the prebendary. Which the Lords found relevant, although vicarage was not expressed in the tack. This practique is not in Stair.

*Page* 295, No. 9.

---

1676. *January* 14. the Abbot of Kinross *against* the Feuar of Kinross.

The Abbot of Kinross, having feued out some lands of the abbacy for a feu-duty *pro omni alio onere, exactione*, &c. and with a clause *cum molendinis et multuris* in the *tenendas*, but not in the dispositive clause; and the feuar being pursued for abstracting multures, by the abbot's successor in the mill, who had got the mill long after the foresaid feu;—the Lords found the feuar free from astriction, by reason of the said charter.

*Page* 294, No. 4.

---

1678. *February*. Sir Adam ——— *against* the Laird of Robertland.

Robertland,—having a tack of the teinds of his barony, lying in the parish of Stuarton, disponed a part of the said barony, with all right, title, and interest he had to the teinds of the said lands, and assigned the tack of teinds as to the lands disponed; and the disposition acknowledges, that there was a full price paid for lands and teinds;—warrants the teinds from fact and deed only. And there being a locality due to the minister out of the whole barony in general, which, for many years after the disposition, was wholly paid by Robertland, and his tenants in the lands not disponed; and the minister having thereafter distressed Sir Adam's tenants, Sir Adam intented declarator, that Robertland should relieve the lands disponed, of the payment of any part of the stipend,