1739. *November* 20. EARL of ABERDEEN *against* CREDITORS of SCOT of BLAIR.

[Elch., No. 13, *Arrestment*; Kilk., No. 6.]

This affair we have taken notice of before, December 12, 1738. This day there were two questions debated:—1*mo*, Whether an arrestment in the hands of an apparent heir was valid and preferable to a posterior arrestment in the hands of the same heir after he had entered?

The Lords found it was; upon this principle of law, *Qui hæres aliquando extitit, a morte testatoris successisse videtur.* Arniston was even of opinion that if the apparent heir had died without being entered, that, notwithstanding, the arrestment would have been good. But the majority of the bench did not seem to be of his opinion.

The second question was, Whether an arrestment could be laid on, and a summons of forthcoming executed thereon at the same time; or whether a summons of forthcoming could first be raised and signeted, then the arrestment upon which it proceeded laid on, and immediately after the summons of forthcoming executed?

It was alleged that this method saved time and expense to the lieges, and had no bad consequences, and besides, it was the practice. The Lords had no occasion to decide this point, the affair being determined by the decision of the first; but they seemed to be of opinion that it was a very irregular practice, and it was denied from the bar that it was the practice save in the Admiralty Court, which the Lords did not much regard.

1739. *November* 20. WALTER STUART of URCHILBERG *against* JOHN STUART of URRARD.

IN the year 1556 the Earl of Athole feued the lands of Urchilberg, *cum molendinis, multuris, et earundem sequelis,* in the tenendas of the charter; and, in the reddendo, there are mentioned eight bolls of multure-victual, with the clause *pro omni alio onere.* In the year 1667 the Earl of Athole grants a charter of the mill of Auldlune, *cum servitiis et sequelis* of several lands, and particularly of the lands of Urchilberg. The question comes betwixt Walter Stuart, proprietor of the lands, and John Stuart, proprietor of the mill, about knaveship and service, which John Stuart pretended the lands of Urchilberg were obliged to pay to his mill. For the proprietor of the mill it was said, 1*mo*, That the clause *cum molendinis*, &c. being only in the tenendas, and not in the dispositive clause of the charter, was not a sufficient immunity from the thirlage altogether, but only a liberation from multures. 2*do*, That the tenants of Urchilberg were in the constant practice of coming to the mill, and grinding their corns there; which, together with the infeftment in the mill, *cum servitiis et sequelis*, was enough to constitute prescription, and establish a servitude of paying sequels and services, to which the thirlage in this case only extended.