To this it was answered, That the clause *cum molendinis*, &c. even in the tenendas, was a sufficient discharge of thirlage, according to the opinion of our most eminent lawyers, and numberless decisions; and especially in this case, where there is so much due by the reddendo for multures. As to the charter of the mill, *cum servitiis*, the Earl of Athole had no power to grant these services, having discharged them so long before in the charter of the lands. *2do*, As to the prescription, their coming to the mill was *meræ voluntatis*, the mill being conveniently situated for the tenants of Urchilberg, and their corn ground there as cheap, or cheaper than it could be any where else, for they payed no outsucken multure, but only the hire of the servants; so that no prescription could be inferred from thence.

The Lords seemed to think there was no astriction in this case, and could hardly conceive a thirlage of sequels and services without multures; but, at the desire of the pursuer, before answer, they allowed a proof, whether the tenants of Urchilberg were in use to perform services to the mill, such as repairing the mill-dam, carrying millstones, &c. which the Lords thought could not be presumed to be *meræ voluntatis*, and so might remove the objection to the prescription.

1739. *November* 21. Crawford of Minorgan *against* ———.

[Kilk., No. 1, *Ranking and Sale.*]

In this question, the Lords found, That a judicial purchaser of lands could not buy in a debt that had been omitted in the ranking, and, in right of that debt, compete with the rest of the creditors, and retain part of the price, though at the sale he had given his bond for the whole; they thought such a bargain was *contra bonos mores*, and that there was a presumptive fraud in buying in a debt which could serve for nothing but to vex the creditors and protract their payment, the purchase being secure enough without it.

N.B.—In this question it was supposed, that, after the ranking is finished, and the certification gone forth, yet, while the subject is *in medio*, and the scheme of division going on, any creditor omitted in the ranking may compear and give in his claim, because the process of division is a sequel of the ranking, without which it is reckoned complete.

1739. *November* 27. Lord Torfichen *against* Feuars of ———.

Lord Torfichen's feuars had a dispute with the vassals of another superior,

about the property of a muir, in which they succumbed, and had a decreet pronounced against them. Before extract, Lord Torfichen interposes, and offers to produce documents that the muir is the property of his vassals. The question is, Whether he ought to be heard?

The Lords found he could, because he had an interest in the question; for though it was not disputed but that he was superior of the muir in question, yet he was not obliged to change his vassal; and it was thought more his interest to keep his own vassal, with whom, or with whose predecessors, he had entered into the feudal contract, than to admit a stranger to the fee. Therefore, though it was not necessary to call him in the process, yet he might come voluntarily into the field, and show reason why the decreet should not pass, at any time before extract, in the same manner as the feuars themselves would have been allowed to produce any new-discovered evidents of their rights.

1739. *November 27.* ——— *against* Sheriff of Sutherland.

In this question, the Lords found, That the pursuer, though he had laid his libel solely on the Act of Parliament about wrongous imprisonment, and concluded in terms of it, yet, without necessity of amending his libel, he could alter his conclusion to damages for oppression, and expenses.

1739. *December 5.* Thomas M'Dougal *against* Barbara M'Dougal of M'Kerston.

[Elch., *Prescription*, No. 20; Kilk., *ibid.* No. 5; C. Home, No. 126.]

In the year 1669, Henry M'Dougal took the estate of M'Kerston to himself in liferent, and his son Thomas in fee, and the heirs of his body; but with full power to the father to contract debt, burthen the lands, anailyie and dispone as he should think fit. The investiture of the estate stood in this manner till the year 1684, when the father, Henry, in consequence of the power he had reserved to himself, made a bond of tailyie, by which he devised the estate to Thomas his son, the present fiar, and his heirs-male, with a prohibition to anailyie, dispone, or contract debt; and strict irritant and resolutive clauses in case of contravention. Henry died in the year 1692, without executing this bond of tailyie, and Thomas his son continued to possess the estate, upon the investiture 1669, till about the year 1700 that he died; and his son Henry served heir to him upon the footing of that investiture, and possessed the estate in fee-simple. About the year 1716, he executed a settlement of his estate upon his daughter, Barbara M'Dougal, the present defender, and the heirs of her body: in consequence of which settlement she was infeft after his death,