No. 11. 1751, Jan. 26. LYON *against* GRAY.

IN 1739 M'Cunn a merchant going to the West Indies, settled his affairs by a deed *inter vivos*, disponing all debts and effects, heritable or moveable then pertaining or that should pertain to him at his death, to John Lyon and John Gray equally betwixt them their heirs executors or assignees, with the burden of his funeral charges and certain debts and dispensing with the not-delivery and reserving power to alter; and in the end he names them his sole executors and universal legatars. Some time after John Gray died leaving a son, James Gray suspender, and in 1742 M'Cunn returned from the West Indies, and gave a commission to John Lyon and James Gray to gather in his effects and sell his lands, and he himself uplifted most of the particular debts mentioned in the deed 1739. The lands were purchased by a trustee for the behoof of John Lyon and James Gray, and on M'Cunn's death Lyon the only surviving creditor confirmed the price as *in bonis* of M'Cunn, and charged James Gray for his half of it, who suspended; and the question was, Whether John Gray's interest ceased by his predecease in the same way as in the case of an executor or legatar, or if it devolved to his son the suspender as his heir, the disposition being to them their heirs executors or assignees? Lord Dun found for the suspender notwithstanding John's predecease, and on reclaiming bill and answers the Lords yesterday adhered. (I was in the Outer-House.)

No. 12. 1752, Jan. 10. J. SIMPSON *against* ROBERT BARCLAY, &c.

A TAILZIE containing a power of revocation *etiam in articulo mortis* was found effectually revoked by a latter will and testament executed by the maker of the entail at Buenos Ayres, though they found that that testament was not sufficient to convey the estate to the legatee. But a declaration having been by him subjoined to the will showing his *enixa voluntas* that his sister the legatee and her heirs should enjoy his estate, and therefore requesting that the above disposition (meaning the will) might take effect, having no lawyer to advise him better; the Lords found this writing sufficient to bind the heir and a sufficient title for an action to denude,—but by the narrowest majority, viz. four besides Milton in the chair, three against it and three *non liquet, inter quos ego*, 10th December 1751.—10th January 1752, The Lords adhered, *me renit.* in the chair,—the Court equally divided and one *non liquet.*

THIRLAGE.

No. 1. 1744, July 17. FEUARS OF FALKIRK *against* THE MILLER.

THE Lords first found the Feuars thirled only *quoad grana crescentia*, and not *invecta et illata*; and 2dly, they ordered the steel mills to be removed in ten days, or otherwise destroyed. In this last, three or four of us, whereof I was one, did not vote, 19th July

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