part (and the special part) of that tenement, and belonging to the same heritor, still came to the mill. 6thly, Some of the lands, which were clearly thirled as to their oats, and also were in use to bring what bear and peas they used in their families, for which they paid insucken multure, paid also a dry multure in bear, though a small one, whereas other lands in the same circumstances paid no such dry multure. The question was, Whether the bear of both, or of either of these was thirled? And we were all clear that this last class that paid no dry multure was thirled, but thirled only for what they used in their families. But as to the lands that paid the dry multure, we were divided. Some thought the dry multure must be instead of the thirlage of bear, particularly the President. Others again thought, since they were in use of bringing their bear thither, paying insucken multure, that behoved to be in consequence of thirlage; and upon the vote this last carried. 7thly, The measures by which the multures and miller's dues were paid were sustained according to the proven use, notwithstanding complaints had been made. 8thly, The lands found liable only for dry multure and no further astriction, were found not liable for any services, since none had ever been performed. But though it was proved that some others of the lands had never paid any services, yet the sucken having paid the services, so that the services were always performed to the mill by one or other, that was found sufficient to preserve the services of the hail sucken, so as none of them could prescribe an immunity, like the payment of an annualrent out of one or more tenements liable.

No. 8. 1742, Feb. 17. A. *against* B. (BREWHOUSE *against* ROBERTSON.)

A CLAUSE of thirlage, bearing *omnia grana sua et fruges quantum serviunt pro sustentatione ipsorum domus, et omnia alia grana tam brassium et triticum, quam omnia alia grana et fruges in eorum possessione ignem et aquam patientia ad molendina nostra granaria et ustrinas de Kelso ibidem moliri, et multuras et devorias pro iisdem solvi solitas et consuetas solvere*; the question was, Whether malt imported, whether ground or unground, and afterwards brewed, was liable to the multure, as the miller alleged, or if what was malted within the thirl was so liable? And we delayed for memorials.—26th November 1741.

In the case mentioned *supra*, 26th November, We all agreed, that malt brought within the thirl ungrinded, and after consumed within the thirl, is liable to multure. But the real question was as to ungrinded malt? We agreed, that neither ground meal or flour was liable, because only *grana et segetes*, and particularly *triticum* was thirled, but *brassium* signifies grinded as well as ungrinded malt. But some of us thought that only such *brassium* was by the words astricted as could be called *grana*, or could be ground. But it carried by the President's casting vote, that all malt consumed within the thirl is liable, whether it be grinded or not, before it be imported. 17th February Adhered. Two of us did not vote. *Vide* the papers as to tholing fire and water, and as to Craig's meaning.

No. 9. 1742, July 14. LOW of Brackley *against* BEATSON of Mawhill.

I NOTICE this only because, in order to fix a rule, the Lords, instead of adhering to my interlocutor, pronounced a new interlocutor determining the import of a clause of

thirlage of all grindable corns growing upon the lands, and gave the same decision as we did in the case of Carnwath, in January 1736, (No. 2,) viz. that it imports all grain growing on the lands that are necessary for the use of the families, or that they shall grind for sale or other uses; and therefore adhered, and refused. The President was of a different opinion, but he was *solus*. However he moved that it should be a split new interlocutor, to the end the point might be fixed.

No. 10. 1742, July 15, 28. ROBERTSON OF INCHES *against* SHAW OF TARDARROCH.

THE lands of Easter-Leyes, and mill thereof, with the astricted and free multures, being wadset by Lord Lovat in 1629, and Wester-Leyes, and Mid-Leyes, feued out *cum molendinis et multuris* in the *tenendas*, in 1641, and the reversion of the mill renounced in 1661; the possessors of Wester and Mid-Leyes constantly frequented the mill, and paid the 13th curn of multures till 1716, that the heritors threatened to leave the mill, and then it was reduced to the 16th curn, and the heritor was permitted to put in or keep in the millboy, though the miller inclined to another, and they never paid any services of any kind. These lands and mill appeared to be part of the barony of Dalcross, which lay at several miles distance, and it was said there were several other mills in the neighbourhood of these lands, whose outsucken multures, as well as the outsucken multures of the mill of Leys, was only the 32d part, or the half of what those lands paid at this mill. The Lords found these things sufficient to astrict these lands, (*me quidem renitente.*)—28th July, Adhered, and I altered my opinion.

No. 10. 1743, Dec. 20. TOWN OF MUSSELBURGH *against* WAUCHOPE, &c.

WE found as we had done in the case of the Earl of Wigton against the Town of Kirkintilloch, (No. 3.) that in a general constitution of a thirlage, not only thirlers are liable where they sell their own grain and buy meal or malt, but also that though they have none of their own, yet if they buy grain in order to be grinded for their families, they must pay multure; but not for grain bought and thereafter grinded for sale; though they are liable for their own grain grinded by them for sale. But we were much divided as to flour in the case of their selling wheat and buying flour for their family, whether that was thirled? and it carried thirled, six to five.—Murkle did not vote. The President was for the interlocutor, as I also voted. Arniston was against it.

No. 12. 1753, Nov. 21. EARL OF HOPETOUN *against* FEUARS OF BATHGATE.

THE Earl was infeft in the barony of Bathgate, (part of the principality) and in the mill, with the multures and sequels of the barony. The feuars of houses and kail-yards in the town, who were also brewers, were in use of bringing all their malt to be ground at the mill, and to pay intown multure; and one day in the week was allotted for grinding to them; and there was a carrier's horse that served the whole inhabitants, and