upon payment of a proportional part of the price. 2dly, We agreed that there was plain evidence of collusion betwixt Aitchison and Drummond his son-in-law in purchasing that right in Drummond's name, as far as collusion is properly applicable to the case; but the question was, Whether Drummond be obliged so to communicate? and it carried by a great majority that he is not obliged, *renit. tantum* Dun *et me*, 3d December 1740. But this was afterwards altered, and it carried by a great majority, that he was obliged to communicate, 21st February 1741; and on 30th June adhered.

No. 5. 1741, Nov. 22. JAMES BLAIR *against* HUNTER.

THE Lords found, that the pursuer who was infeft in certain lands as principal and others in real warrandice, and from whom the principal lands were evicted many years ago, about 20, during most of which he could not effectually bring his process of recourse against the warrandice lands, because of certain disputes still depending concerning the principal lands,—had his recourse only to the extent of the value of the principal lands evicted as they were at the time of the eviction, but not for the rents he lost since the eviction, nor other damage in place of them; but if the rents of the warrandice lands were extant, that he would have right to them, or to sue the intromitters if they had not a good defence. This indeed is agreeable enough to the notion of real warrandice considered as a right of property conditional, but not if it is considered as a right in security, which I always understood it. However the decision was by a great majority, *renit tantum* President *et me*. But 6th November 1741 this altered, and found that the real warrandice is of the same extent as the personal obligation of warrandice, and gives recourse for the damage since the eviction (*i e.* the annualrents of the value of the lands) as well as before. For the interlocutor were President, Royston, Justice-Clerk, Minto, Strichen, Dun, Balmerino, *et ego*. *Con.* were Drummore, Kilkerran, Murkle, and Arniston.—N. B. Arniston agreed that the recourse lay not only for the value of the lands, that is lands of the same value, but for the damages at the time of eviction.

No. 6. 1751, Feb. 12. CREDITORS OF BURLEIGH *against* HARROWER.

HARROWER feued this mill of Millnathort. at least his authors did, in 1697, with the multures of certain particular lands, and some dry multures, for a feu-duty equal to the then rent of the mill, though it is said now to be of much more value. An eviction happening of part of the lands expressly mentioned as thirled in the miller's charter, and likewise the dry multures, being less than was put in the charter, the miller claimed abatement of his feu-duty equal to the eviction. The creditors alleged, that both the common debtor, Mrs Margaret Balfour, and they her creditors, were singular successors in the superiority, and did not represent the granter of the feu, Lord Burleigh, and therefore not bound by his absolute warrandice. Answered, the abatement is not claimed upon the warrandice; but as this is a rent, a *canon*, paid for the subject feued, where the subject, or any part of it is evicted, no rent or feu-duty can be due for it, and the rent evicted must be deducted from the feu-duty. I thought that if it were either ward or blench holding, such partial eviction could not affect a singular successor; but that a feu was a sort of perpetual location for a constant rent, and the feu-duty was the *canon*

annuus, and therefore in case of eviction of the subject, there behoved to be an abatement, but not equal to the eviction, but by the same proportion as the part evicted bore to the whole, for though the eviction should exceed the feu-duty, yet there must still be a feu-duty paid for what remained. The President thought that in ordinary feus there could be no abatement against a singular successor, if as much remained as was sufficient for the feu-duty, and that the feu-duty was not a rent, but a sort of acknowledgment. The feuars are sometimes called heritable tenants. But as to this last I observed, that feu-duties were considered in law as the rents, and instanced the laws allowing the King to feu annexed lands, and ward-vassals and Bishops to feu their lands, without diminution of the rental. And it carried that the miller should have an abatement, but only proportional. Then the miller's procurator insisted, that as to dry multures, he should have abatement of the whole deficiency, as the eviction was there clear and certain, and was all part of the rent. But we thought that dry multures were always paid for some mutual prestation by the miller, such as grinding for knaveship alone without multure. The miller could not pay all the dry multure either of rent or feu-duty; and therefore we gave the same judgment as to the dry multure. 28th June, Adhered; *renit.* Justice-Clerk (in the chair) and Drummore.

WITNESS.

No. 1. 1744, Nov. 22. HIS MAJESTY'S ADVOCATE *against* KERR of Crumnock.

See No. 8, *voce* WRONGOUS IMPRISONMENT.

No. 2. 1735, Jan. 15. COLONEL ERSKINE *against* BLACKADDER.

THE Lords allowed the witnesses to be examined, though moveable tenants. The Lords remembered several cases where that objection was over-ruled, and therefore would not wait for the answers.

No. 3. 1735, Nov. 18. FRANCIS SCOTT *against* LORD NAPIER.

THE Lords found the Lord Napier not obliged to depone in general, but that the pursuer should give in a particular condescendence, 26th June.—18th November, The Lords adhered.

No. 4. 1736, Jan. 2. PROCURATOR-FISCAL OF EDINBURGH *against* CAMPBELL.

THE Lords found the libel proveable by the party's oath; and found that Campbell might bring Stewart as a witness, to prove his exculpation or alleviation.