could not claim a terce of pasturage in a muir which followed these lands; for, though there be no terce of servitudes considered separately by themselves, yet, where they are consequent and conveniencies to adjacent lands, a terce may be sought, even as in a common moss;—even as she would be burdened if the lands of her terce were the *prædium serviens*, so she must have the benefit if it be *prædium dominans*. *Vol. I. Page 655.*

1695. *January* 3. AUCHTERLONY *against* DONALDSONS.

THE Lords thought, in regard the wife was dead, that the clause making her and her husband a bairn of the house did evanish, she having no children, and deceasing before her father; but, if she had survived him, the obligement would have made her so far a creditor to her father, that he could not gratuitously dispose of his moveables, *mortis causa*, to his other children, without leaving her something. But that case did not exist. *Vol. I. Page 655.*

1694. *January* 3. SCOTS *against* AYTON of KINALDIE.

SCOTS, children to Balmount, against Ayton of Kinaldie, for payment of 2000 merks contained in a bond granted by Sir John Ayton, whom Kinaldy represents, to Balmount, on this condition, "if he have a son of the marriage:" and they subsume there was a son born, though he died that same day. ALLEGED,—His once existence purified not the condition, seeing there was another clause, of his out-living the term of Lammas or Martinmas after his birth; which did not fall out: so the bond was as much extinct as if it had been made payable when he arrived at the age of sixteen, and he had never arrived at that age.

Though there was equity for the sisters, as executors, to claim it, yet, in regard of the strict conception of the bond, the Lords resolved to hear it *in præsentia*. *Vol. I. Page 655.*

1695. *January* 4. CRIGHTON of MILHORN *against* MEIK of LEIDCASSIE.

THE Lords thought the feuars of Milhorn preferable. Both the mills belonged of old to the Abbot of Couper; and, when in his hands, he made acts of court, That when they could not be served at Milhorn, by drought or frost, that then they should go to Leidcassie. Afterwards he feus out Milhorn *cum astrictis multuris dominii de Couper tam liberis quam siccis;* and, subsequent to this constitution of thirlage, he feus out also the other mill of Leidcassie, but simply without any astriction to it at all. So the Lords thought the prior acts of court could give no right to Leidcassie; and that their going to it when Milhorn wanted water could not prescribe a right to this second qualified thirlage; and that there was no prescription, there being plain interruptions within the forty years; and, if this were allowed, the thirlage of the first mill might be