1739. *February* 1. EARL of WIGTOWN and LOCKHART of Carnwath, *against* FEUERS of Biggar and QUOTQUAM.

IN the division of the common muir of Biggar, it being contraverted, Whether certain of the charters produced by the vassals imported a right of property or servitude in the muir? The Lords found, that where lands were disponed, with parts, pertinents, and pendicles, or where they were disponed, with mosses, muirs, commonties, parts and pertinents in general, whereon possession in a common muir had followed for forty years, it did import a right of property; but where the lands were disponed with parts, pendicles, and pertinents, with common pasturage used and wont, though the possession in the muir had for forty years to all intents been the same, as in the former case, it was found to import only a right of servitude in the common muir.

For the rest of this case, see *Morison's Dictionary*, p. 2468.

1739. *February* 2. DANIEL FORBES *against* ALEXANDER INNES.

THE circumstances of this case are stated by C. Home, (*Mor.* p. 712.) It is also noticed by Elchies, (*Pro. Note, No.* 1.) Lord Kilkerran has the following note of the grounds of the decision.

"Feb. 2, 1739. The Lords adhered.

"*Arn.* observed, that such notes are even no otherwise indorsable than as a holograph bond; that is, by a writing on the back, however short, but not by a blank indorsation; and that by the words of the act of Parliament, *Notes of a trading company*, is understood, Notes of a company incorporate by law, as the bank, &c.

"I think the interlocutor right, and that such notes are both compensible, and that arrestment before intimation to the accepter will be effectual.

"*Nota.* It has been often found that such notes are compensible, *ergo* arrestable, an unanswerable consequence."

1739. *February* 2. THOMAS BOYES *against* JOHN OGILVIE.

THIS case is reported by Elchies, (*Cautioner*, No. 7.) where the circumstances are stated. Lord Kilkerran's note is as follows:—

"The general point of *jus superveniens accrescit* would *per se* not have been sufficient to support the interlocutor; for notwithstanding of such accretion, as between buyer and seller, yet still the separate right being duly affected by a creditor, would remain with that creditor, in competition with the purchaser, though this was not the subject of any argument at this time, the Lords being all clear