tenants, or possessors, should happen to grind for other uses, they being bound to pay therefor in-sucken multure, knaveship, and bannock, as stipulated by the clause in the charter. No. 75.

But the Lords were unanimously of opinion, That the superplus of the corns not necessary for the consumption of the families might be lawfully exported in kind, in case they were not grinded, without being liable for any multure.—See APPENDIX. *Fol. Dic. v. 2. p. 466.*

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1738. *November* 24. RAMSAY *against* BREWHOUSE.

No. 76.
Rule of the dimension of mill-measures.

The dimensions of the cap or dish by which a miller receives his multures or knaveship, being local, and depending on custom, long possession was found to presume the measures in use to be agreeable to the original constitution.

The like found as to knaveship, November 17, 1741, Bruce Stuart of Blairhall *contra* Colonel John Erskine, No. 82. p. 16020.

*Kilkerran, No. 1. p. 572.*

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1739. *July* 14. LOW *against* BEATSON.

No. 77.
Possession for 40 years upon a bond of thirlage, before 1681, subscribed by notaries, only three of the witnesses being inserted.

Upon advising the petition, by which the interlocutor between the said parties of November 7, 1738, *voce* WRIT, is there said to have been kept open, with the answers thereto, it appearing, by the proof, that there had been a 40 years possession conform to the bond of thirlage, the Lords, without expressing the *ratio decidendi*, " Sustained the astriction."

*Kilkerran, No. 2. p. 573.*

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1740. *January* 22. MAXWEL *against* STOT and Others.

No. 78.
The coming to a church-mill for 30 years presumes astriction.

The coming immemorially to a church-mill was found sufficient to presume astriction. So the case happened in fact to be, that the proof of coming to the mill was immemorial; but it was the unanimous opinion of the Court, that being a church-mill, a proof of 30 years coming had been enough, which, by act of sederunt 1612, came in place of the 13 years possession, which, at the Reformation, presumed the churchman's title.

*Kilkerran, No. 3. p. 573.*

*** Lord Kames mentions this case more fully, as follows:

In a process for abstracted multures at the instance of the Lord Maxwell, as proprietor of the mill of Clouden, against his feuers, the Lords, in respect the mill of

No. 78. Clouden and the defender's lands were part of the ancient barony of Holywood, pertaining to the abbacy of Holywood, and of the defenders' coming immemorially to the mill of Clouden, and paying the high in-sucken multure, and performing services, found the lands astricted to the said mill. In the reasoning, the Court was of opinion, That the coming to a church-mill, without any constitution in writ, is as effectual to constitute a thirlage as the coming to the King's mill, notwithstanding that the contrary had been formerly determined, which was thought to be erroneous. In this case, the defenders' lands were church-lands; yet the Lords were of opinion, that this made no speciality; for the ground of the decision lies in this, That churchmen being presumed to have lost their rights at the Reformation, the law did presume the same from a 13 years possession before the Reformation, which afterwards, when it came to be impracticable to prove possession before the Reformation, by witnesses, was by act of sederunt, 16th December, 1612, altered into 30 years possession after the Reformation; and therefore 30 years possession after the Reformation was in all views held equivalent to a title in writing.

*Fol. Dic. v. 2. p. 462.*

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1740. *June* 17. BROWN *against* FLETCHER.

No. 79.
Thirlage inferred from circumstances.

The following circumstances were found sufficient to infer astriction, viz. 1*st*, 40 years use of coming to the mill, and paying in-town multure, though a very small matter more than was paid by the out-sucken; 2*dly*, A paction between the miller and the tenants, whereby the miller quitted his knaveship, upon the tenants' passing from meat, which they had been in use to get from the miller when they came to the mill, and from sieves which the miller had been in use to furnish them, neither of which the out-sucken ever got; 3*dly*, The tenants' paying for the multures of sold corns; and, *lastly*, Two tacks, whereby the heritor took the tenants bound to carry their corns to the mill in question, though of a late date, one being set in 1712, the other in 1721, and by a singular successor.

*Kilkerran, No. 4. p. 573.*

*** This case is reported by Lord Kames:

Fletcher having abstracted his corns from the mill of Glaswell, Brown, the proprietor of the mill, brought a declarator of astriction, with a separate conclusion against the tenants of Ballinsho for mill-services. A proof being admitted, before answer, the pursuer brought sufficient evidence, that the possessors of Ballinsho had, as far back as could be remembered, frequented the mill of Glaswell with all the corns they had occasion to grind, paying in-town multure; the millmaster, on the other hand, carrying their corns to the mill, and furnishing them sieve,