than if it had been made in consequence of the Act 1685. By that Act I may safely purchase when the entail is not recorded. If I may purchase, I may bargain for a lease. I approve of Lord Pitfour's distinction between moral and legal wrongs.

MONBODDO. The clause of warrandice cannot determine the tack. The setter had a doubt of his powers, and therefore he declared that he would not warrant the tack beyond his own life, or fifteen years. We have a good rule for the interpretation of entails, according to the legal and grammatical sense of the words. The words of the entail are clear, but then it is not recorded. Private knowledge is nothing. The entail is mentioned in the tack, but then it is not provided that the tack shall submit to its regulations; the tenant is left to take his hazard.

COALSTON. The case of this tenant is exceedingly favourable. I am sorry that the master has taken the advantage of the entail. This entail, not having been recorded, would have been ineffectual had it not been for the clause in the tack. I admit that private knowledge can have no effect: the entail only supports tacks for fifteen years on the life of the setter. It seems that the clause in the tack implies a consent by the tenant that the tack should only subsist as long as the entail authorised it.

On the 18th January 1774, the Lords sustained the reasons of suspension.

Act. H. Dundas. *Alt.* A. Lockhart. *Reporter,* Kaimes.

Diss. Alva, Hailes. *Non liquet,* Coalston. *Absent.* Strichen, Justice-Clerk, Elliock, Alemore, President.

1774. *January* 25. JAMES SIMPSON of Man *against* COLONEL ROBERT SKENE.

THIRLAGE—PRESCRIPTION.

The plea of the Negative Prescription, founded upon only a partial possession having been had by the dominant tenement, not admissible to limit the extent of a thirlage of *omnia grana crescentia* constituted by writ, where the obligation of thirlage, as originally constituted, has been repeated in the successive investitures of the servient tenement, the latest whereof, in favour of the defender himself, was much within the years of Prescription.

[*Faculty Collection, VI.* 262; *Dict.,* 10,746.]

COALSTON. The investitures imply an astriction as to *omnia grana crescentia,* but the practice is for liberty. The defence is, that the clause of *omnia grana crescentia* has been limited by means of the negative prescription: the negative prescription cannot operate against the superior; but whenever the superior dispones the mill, the thirlage becomes the subject of a prestation to a third party, and may be the subject of negative prescription. The case of *Grahame of Dougalston,* in 1735, is as strong as any thing can be.

JUSTICE-CLERK. When a superior stipulates a certain multure as the *reddendo* of the vassal, there can be no negative prescription. When a thirlage is constituted by acts of Court, or by possession, as in king's mills or church mills; this may be lost by negative prescription. There is a third case where a thirlage is established by covenant. Even in that case a contrary usage may derogate from the written obligation: but my difficulty is this: Here is not only an obligation in writing once expressed, but a series of feudal titles all uniform. Every renewal of the title was a fresh acknowledgment of the thirlage. Suppose Colonel Skene should admit a disuse of an hundred years, what can be said against the precept of *clare* in 1760? After a disuse of a hundred years, the parties may agree anew for a thirlage; how can the negative prescription operate against the feudal obligation in 1760?

PITFOUR. The expression, *all grain in growing on the land*, may be limited by use to *grain consumed in the family*.

[This is inconsistent with the precept 1760, which expressly excepts teinds and horse corn.]

GARDENSTON. We have here not only an ancient astriction, but this repeated down to 1760: were this a new astriction, it would be good by the precept 1760. I thought that it was an established law, that a right provided in such writing could not be cut off by disuse in whole or in part.

JUSTICE-CLERK. The family of Kinross is superior of the mill as well as of the lands, and is liable to Colonel Skene in warrandice.

On the 25th January 1774, "The Lords found that the defender was astricted as to *omnia grana crescentia*," excepting teind, seed, and horse-corn; adhering to Lord Gardenston's interlocutor.

Act. A. Abercromby. *Alt.* A. Rolland.

Diss. Kaimes, Coalston, Pitfour, Alva, who were for a farther explanation of facts.

1774. *January 27.* DAVID RUSSELL and OTHERS *against* The YORK-BUILDING COMPANY.

RUNRIG—Act 1695, cap. 38.

I. Benefit of the statute is competent to feuars even against their superior, without regard to the circumstance of some of the feuars called as defenders having their several properties in one plot, each by themselves, surrounded by the lands lying Runrig, (these particular feuars making no objections themselves,) and although the Runrig lands lay in the neighbourhood of a borough of barony.

II. Competent in the division to set off the shares of the parties on either side of the town, as shall be most convenient for the general interest, without regard to the previous local possession of individuals.

[*Faculty Collect. VI.* 265; *Dictionary*, 14,144.]

KENNET. A feuar obtains a small feu which, from its situation, does not en-