No. 3. 1740, Nov. 19. POLLOCK *against* THE HERITORS OF KILLALAN.

THE rule of modifying stipends is, that the *minimum* must amount to so many chalders victual and 100 merks as make eight in number, not valuing the victual but counting the number of chalders; therefore the pursuer who had five chalders and a half and L.112, was found entitled to an augmentation though the victual was worth L.100 the chalder, and the Lords thought that at that conversion it was a competent stipend. This was brought over again 24th June 1741, when the proof was concluded, the former interlocutor having repelled the defence only *in hoc statu*; yet it still carried as formerly to give an augmentation in money to make up 300 merks, which with the five chalders made eight.

No. 4. 1742, July 30. MR J. M'GARROCH *against* SCOTT.

THE Lords found that a Minister on his decreet of locality might charge a tenant for his stipend even to the extent of the tenant's whole rent, and is not restricted to the fifth of the rent where the tenant has the whole rent in his hands;—and therefore adhered to the Ordinary's interlocutor, and refused Scott the tenant's petition as to that point. This done yesterday.

No. 5. 1743, Feb. 15. MR J. HOGG *against* HIS CREDITORS.

HOGG's salary as lecturer which arose from a mortification being arrested by his creditors, he alleged that it was alimentary and not arrestable as servants fees, and the creditors insisted that it is arrestable as Ministers stipend. The Sheriff found it arrestable, and Minto refused an advocation. Hogg reclaimed, and was willing to quit L.20 sterling yearly of L.50 sterling to his creditors, reserving but L.30 for his own and family's use. Both President and Arniston seemed to think it alimentary and different from Ministers stipends; and the Lords remitted to the Ordinary with a view that he might remit with instructions agreeable to the lecturer's proposal.

No. 6. 1749, June 14. SECOND MINISTER OF DUNFERMLINE *against* THE HERITORS.

THIS Minister pursues an augmentation; and the defence was, that the second Minister was originally established only of consent on a voluntary contribution by the town and heritors authorized by decreet of the Court of Commission in 1647 and 1650, and therefore could not pursue an augmentation, as was found in the case of Falkirk and Inveresk. The Lords in respect of the decreet of the Commission repelled the defence and found the pursuer entitled to an augmentation.

No. 7. 1751, Dec. 3. M'AULEY *against* REPRESENTATIVES OF KIDD.

IN 1658 a skipper in Queensferry mortified a tenement of houses to the then Minister and his successors in office, which in 1710 was filled by five different poor low families,

and all the rent it was proved to have yielded at a time was about L.15 Scots. During the late incumbent Mr Kidd's life it fell totally in disrepair; and the present incumbent Mr M'Auley sues the executors of Kidd to repair the houses, and for damages. But we thought that a common action did not lie even for repairing of manses, or the Popish Clergy would not have suffered their manses to go into disrepair, and the acts of Parliament for remedying the abuse, particularly 8 act 21 Parl. James VI. would have been useless: That this would not fall under the statutes anent conjunct feuars and wardatars, no more than manses, nor could it fall under the laws anent manses, because it was not declared sufficient at Kidd's entry. Therefore they found that no action lies against these executors. But Kilkerran thought that if the houses had been sufficient at Kidd's entry, though no manse for the Minister, he would have been bound to uphold them. Woodhall only differed, and stated the case of the parish newly erected at Whitburn, where the heritors have bought lands, the rents whereof make up the Minister's stipend, and asked whether the Minister was not bound to uphold them.

No. 8. 1753, July 3. WILLIAM GLOAG *against* JOHN M'INTOSH.

LORD MINTO reported a question for advice upon printed minutes, Whether the 9th act 1669 anent the prescription of Ministers stipend in five years extended to vacant stipends? And we unanimously found it did. And I observed (as did Justice-Clerk after me) that that prescription was introduced not *in odium* but *in favorem* of those liable who are not in use to preserve them discharges for a great number of years: The same reason for which discharges of supply need not be produced after three years. I also observed that stipend was general, applicable to many sorts of wages, soldiers, servants, officers salaries, and they were called Ministers stipends only as a description to distinguish them from others, and in other acts they are more improperly called stipends of kirks, *vide* 52 act 1661, 13 and 20 acts 1672.

SUCCESSION.

No. 1. 1734, Feb. 5. STODDART AND RIDDELL *against* THOMSON.

THE Lords found the exheredation conveys no right to any person and does not exclude the heir at law.

No. 2. 1736, Jan. 29. DR WAUCHOPE *against* WAUCHOPE.

See Note of No. 6, *voce* MINOR.

No. 4. 1738, Feb. 16. NEAREST OF KIN OF ADAM DUNCAN, *Competing*.

I reported a bill of advocation from the Commissioners of Edinburgh at the instance of the nephews and nieces of the said Adam Duncan by his brothers and sisters who prede-