by the 15th act 1535. They also thought, that such a claim did not lie against the widow of the grandfather, but only against the widow of the father, and that the estate must be considered as at the grandfather's death; and if there was then sufficient for the aliment over the widow's liferent, that the mismanagement of that heir could not after his death give the next heir a claim of aliment against the grandmother; and in general it was said to be unjust after a Lady had been found in a liferent in the best way the law can secure her, that the mismanagement of the fiar should hurt her. But I and others thought, that we were to judge what is the law of Scotland, not what we thought ought to be the law; that the act speaks of all conjunct fiars and liferenters without distinction; and Balfour says expressly, "That when there are more liferenters than one, they must all contribute *pro rata*;" and therefore the estate cannot be considered as it was at the commencement of the first liferent. Craig and our other law writers are of the same opinion. The Court so found as early as 1525, which was but 34 years after the act; they so found in 1677; and though there is one decision on the other side in 1682, yet afterwards the Court decided according to the ancient practice, 27th November 1685, and others, quoted in the petition. *3tio*, They thought the old woman could not spare any thing out of her liferent of 1000 merks yearly, though precedents were quoted of much smaller liferents contributing; but that was an arbitrary question, that could not have any influence on our law, and (as I thought,) chiefly on that consideration the Court adhered, *renitentibus* Leven *et me*, and Minto, who was in the chair. (See No. 90, p. 454.)

No. 14. 1752, July 22. GRANT *against* CREDITORS of STRACHAN.

(See Note of No. 51. *voce* ADJUDICATION.)

No. 15. 1754, Jan 5. PATRICK URQUHART *against* WILL.

WILL was imprisoned at Stirling on a caption for a debt due to Ross, (for which Urquhart was cautioner, and as was said had paid,) and applied on the act of grace. Urquhart had obtained against him the Commissary of Aberdeen's decreet in a process of scandal, decerning a pallinode to be performed in the kirk of Frasersburgh, and a small fine; and on a suspension, the letters had been found orderly proceeded, and expences given. Urquhart raised a caption on this decreet, and arrested Will in prison, and afterwards presented a bill of suspension of the aliment modified, which Murkle refused;—and he reclaimed to us, and in the answers offered to obey the Commissary's decreet as to the pallinode; and on advising bill and answers, we refused the bill as to the debt due to Ross, and found that the act of Parliament does not take place in the case of commitments for delicts; but in respect of the respondent's offer to obtemper the Commissary's decreet, found that the charger ought either, on the respondent's enacting himself under the penalty of L.5 sterling to obtemper the pallinode, to set him at liberty, or otherwise to aliment him.

No. 16. 1754, Jan. 26. LORIMER *against* M'COULL.

LORIMER, a merchant in Edinburgh, having been imprisoned on captions at the instance of his creditors, applied to the Magistrates for an aliment on the act 1696, and they having allowed the creditors a proof of his secreting and concealing some of his effects, on advising the proof, they found that he did conceal several of his effects not given up in the condescendence, in order to screen the same from his creditors; but found nevertheless, that he

was entitled to the benefit of the act of Parliament; but restricted his aliment from 7d. before modified to 5d. Of this sentence the creditors presented a bill of suspension, which Kames refused; and on a reclaiming bill and answers, we adhered, (*me renitente*,) because the particulars proved were only some household furniture, bed and table linen, eight or ten uncut webs of linen, a silver tea pot, flat, several silver table spoons, and dividing spoon, two boxes nailed down, and a scrutoire, feather bed, blankets, chairs, a carpet, &c. This the Court thought of too small value to deny him an aliment, because sundry of them were afterwards poinded by the creditors,—but we could not know what more he may have concealed, though these only were discovered, and far less what was carried off in the scrutoire and nailed boxes; and I could not reconcile this with our decisions 26th July 1734, Rattray against Thomson, nor with the last clause of the act 1696, on touching notour bankrupts.

ALTERNATIVE.

No. 1. 1742, Dec. 2. ANSTRUTHER *against* MAGISTRATES of PITTENWEEM.

As to the difference betwixt an alternative obligation, where the debtor has a proper option, and an obligation, with a penalty or liquidate damages, *vide* Note on these papers (*infra*.) Arniston and some others inclined to think, that this feu-duty was of this last sort; but as we would have differed in that, we determined only the point of form, that after the decreet in the inferior Court, Sir John Anstruther could not amend his libel and demand higher prices.

(AN ancestor of Sir John Anstruther had in 1634 granted to the Burgh of Pittenweem a feu-right of the mill of the barony, to be holden "for payment of twa chalders malt "and twa chalders bear, sick as grows on the ground of the lordship of Pittenweem, or "of the like goodness and sufficiency, merchant ware, and merchant mett, yearly betwixt "the feasts of Yule and Candlemas, with the common measure of Anstruther within the "said mill, *or* the sum of L.10 money of this realm for ilk boll thereof, in the *option* of "the Bailies council and community of the said burgh, in name of feu-farm only." The superior had demanded L.10 for each boll of arrears. The Magistrates pleaded, That as they had by their *reddendo* the option of either paying the bolls or L.10 each, and therefore might have paid the *ipsa corpora*, the superior could not demand more than the current price of each boll as at the time when he might have made the demand. Lord Balmerino, Ordinary, had decerned for L.10, (by mistake in the interlocutor L.10. 7s.) each boll, without regard to the current prices. Lord Elchies wrote the following Note upon a petition by the Magistrates against this interlocutor. Vol. 15. of Session Papers.—ED.)

"It seems hard to give a reason why the charger should in the terms of the feu-contract be obliged to receive less than L.10., if the suspenders will not deliver the victual, as he could ask no more than L10, whatever were the current prices. It is true this is properly an option, and not a conventional penalty, and therefore, if the demand had been only made this day, possibly the feuars might deliver the *ipsa corpora*, (though not of that year's growth,) and had they offered victual in 1741, though for the feu-duties of the mill in 1732, or of lands in 1718, I doubt the charger must have taken it; but since they did