his opinion in a case of this kind, which depended on the custom and practice with respect to letters of supplement; that he had advised with the most experienced writers, who were of opinion that it was customary to obtain such letters of supplement in cases of this kind; and when he further considered the bad consequences that might attend the not sustaining them, particularly, that there is no other method of carrying the cause; that all steps of diligence, such as arrestments, or inhibitions, must fall should the letters of supplement not be sustained; he was, therefore, of opinion, that they fell to be sustained.

"When the Lords came to reason upon this case, it appeared not to be without difficulty. So far behoved to be admitted that a principal party cannot be called by a supplement regularly; yet if it were true, that unless it were admitted in this case, all the proceedings that have been had, and upon which arrestments and inhibition had been used, must fall, it were hard. On which the President suggested, that the supplement might be sustained *ad effectum*, to advocate the cause, which to others looked a little odd; for if it was sustained, why should the cause be advocated, but rather remit to the sheriff. But his meaning was, that there could be no advocation except there was a defender; and, therefore, he was for sustaining the supplement to that effect. Others thought that the cause might be advocated simply for that very reason, that the cause could not proceed in the Inferior Court without a defender, which could not be there had; and that for that reason it ought to be brought into this Court.

"The Lords advocated the cause, and remitted to the Ordinary to proceed accordingly."

1755. *January* 8. ALEXANDER DONALDSON of Kinnairdy *against* OFFICERS of STATE.

THIS case is reported by Lord KAMES, (*Sel. Dec.* No. 72; *Mor.* 9926.) Lord KILKERRAN gives the following statement of the grounds of the judgment:—

"*January* 8, 1755. Preferred Kinnairdy, but not upon the grounds pled for him in the information, but on what follows:

"That the act 1587, its not annexing patronages was true, but not to the purpose, for these kirks that belonged to abbacies, and whereof that in question was one, were not patronat, they were served by monks appointed by the abbot. A few, it is true, there were that belonged to the Chapter, but they were but a few; the bulk of them belonged to the Abbot, and were served by monks of his appointment, as aforesaid. So that whether patronages were or were not annexed, (as certainly they were not,) is nothing to the present question, which falls to be determined upon the act 196, of the Parliament 1594. Before that act, there had been several of these abbacies erected into temporal benefices; but then all that the Lords of Erection got was the teinds. But there were no kirks till, by the aforesaid act 196, Parliament 1594, they were, for the first time, declared patronat, and to be provided by presentation as common kirks; the consequence of which was, that as the grant of the teinds did not carry the right of patronage, that was and remained in the crown, except where, in the after grants, the patronage or *jus presentandi* was given to

the Lord of Erection, and which the family of Panmure had in this case, who were specially infeft in the patronages, on the resignation of William Murray, to whom they had been granted by the crown; and on this ground it was that the question turned between the Crown and Lockhart of Lee, for the patronage of Lanark. Lee had got the right to the teinds, but no right to the patronage, and having resigned in the hands of the Exchequer, he obtained from them a novodamus, with a grant of the patronage, which the Lords found the Exchequer could not give without authority from the Crown; all they could do on his resignation was to give a new charter of what he had before, and no more."

1755. *January* 31. EDMUND BRADSHAW and GEORGE ROSS, Assignees under the Commission of Bankrupt, against CAPTAIN WILSON of Loudon, *against* ADAM FAIRHOLM and OTHERS, his Creditors, Arresters.

THIS case is reported in *Fac. Col.* (*Mor.* 4558.) and by KAMES, (*Mor.* 4556.) —The following are Lord KILKERRAN'S notes of the argument at the bar, and of what was said by the Judges:—

" *July* 19, 1754. This case was this day reported; and as it is of great consequence, and may probably go elsewhere, the Lords reasoned upon it, not with a view to determine it, for they resolved that it should be heard in presence; but that the lawyers might, from the Lords' reasonings, get the more light, and be the better directed how to argue the case at the hearing; and having taken the points separately, the Lords were in their reasoning generally agreed upon the general point, that arrestments in the hands of Scotsmen residing in Scotland, were preferable to the assignees from the commission under the statute of Bankruptcy, upon this ground, that the laws of the country where *res est sita* are, without distinction between *mobilia* and *immobilia*, the laws by which the right thereto is to be determined; and that the notion that *mobilia non habent sequelam* was an abstract notion not founded in nature nor agreeable to reason: that it might be true many foreign lawyers follow that notion, as it also is, that there was adjudgment of this Court agreeable to it between *Brown* and *Brown*, in 1744*.

* Lord KILKERRAN has preserved the following note of the cases here referred to:—

" In 1744, *Brown* against *Brown*, That the succession in moveables was to be determined according to the laws of the place where the defunct died, upon the notion that *mobilia non habent sequelam*.

" But in a later case, in summer 1749, a very different system was adopted, viz. That the maxim that *mobilia non habent sequelam* was to be rejected as an abstract notion that has no foundation in the nature of things, and that the succession in moveables, as well as in heritage, was to be governed *secundum leges loci*, where they are situated.

" The next question that occurred, was in summer or in winter 1746. *Alexander Christie* against *Samuel Straiton*, where it was found, the Court being much divided, that after a man is found to have complied with the directions of the statute of bankruptcy, and is acquit, his effects cannot be attached in Scotland for payment of any debt that he owed before the bankruptcy, if that debt was contracted in England.

" The like question again occurred in winter 1747, but as it was only at passing a bill of suspension, it was no judgment.

" But in a day or two thereafter a case occurred, in effect the very same that is now before us, *Thomas Ogilvie* against the other Creditors of *John Aberdeen*,—The case was, John Aberdeen, a Scotsman, residing in London, had surrendered his effects, in compliance with a commission of bankruptcy; and Thomas Ogilvie, who had arrested his effects in Scotland, on a debt that had been contracted in England, entered his claim before the commissioners of bankruptcy, which they refused, in respect of the arrestment he had used on the bankrupt's effects in Scotland. Thereafter Ogilvie pursued a furthcoming, in which the assignees for the commissioners