by which the stipend was fixed at 600 merks. Now, it is a rule of Court, that no new augmentation shall be given of stipends augmented since the 1707, when the Lords of Session were made Commissioners for Plantation of Kirks, because it was supposed that the Lords had done more justice to the ministers than their predecessors had done.

To this it was ANSWERED,—That it was now clearly established in practice, that the minister's stipend could be augmented, notwithstanding the teinds belonged to a bishop or an university. *2do*, That the decree in the 1710 could not stand in the way of this augmentation, because *res devenit in alium casum.* At the time this decreet was pronounced, the Provost, or chief master of the College, had no other fund but the teinds of this parish, and if the Lords had given a full stipend to the minister, he had been quite impoverished; but now, by the union of the two colleges, he was very well provided, and could easily spare the augmentation which the minister wanted: that, no later than the 1752, the Lords, in a case where the same university was a party, augmented a stipend which had been augmented before in the 1718, for no other reason than that it was below the minimum, and that the titular could very well spare it. And so the Lords found.

The President said that the Commissioners of Teinds, before the 1707, had entertained a false notion that they had no powers to give augmentations out of teinds belonging to bishops and universities; and even after that period an opinion had prevailed that the teinds belonging to heritors were to be burdened with augmentations, rather than bishops' teinds: but these notions were now universally exploded, and most justly, since the bishops got by act of Parliament the power of setting tacks of their teinds, with the burden of augmentation of ministers' stipends; and his only difficulty in the matter was, that it did not appear to be the intention of the Legislature, by the union of the two colleges, to augment the stipends of the ministers, and thereby to take away from the professors what they had gained by the union; for, as to the decreet 1710, he thought it did not stand in the way, as the circumstances of the case were now so much altered.

1755. *July* 9. JEAN HAY *against* CREDITORS of CASTLEHILL.

THE said Jean Hay, wife of Castlehill, got a disposition in trust from her husband of certain lands, for the behoof of her children, with a precept of sasine, but whereupon she did not take infeftment till one creditor of her husband had adjudged, and taken infeftment upon the adjudication, and after him another creditor, within year and day of the first, but without infeftment; then the wife took infeftment upon her disposition, and the question came, betwixt her and the second adjudger, which of them was preferable? And the Lords unanimously found, That the wife was preferable; upon this general principle of law,—that, in all competitions betwixt adjudgers and voluntary disponees, the first feudal right gave the preference, and that, in all such competitions,

the Act 1661 had nothing to do, which only respected the preference of adjudgers among themselves.

1755. *November 25.* ANDREW STEUART *against* THE FREEHOLDERS of LANARKSHIRE.

[Kaimes, No. 110.]

THE question here was, Whether the office of coroner and serjeant, with its perquisites and emoluments, of the bailiary of the regality of Kilbride, retoured to forty shillings of old extent in the 1649, gave a title to vote?

The Lords were of opinion, that though the regality was taken away by act of Parliament, yet the office of coroner and serjeant within that territory still remained, and that the coroner and serjeant might still officiate, as officers to the jurisdiction still in being, such as the sheriff and justiciary. They were also of opinion, that, as there were certain rents still paid in corn out of certain lands to this office, that was possession sufficient, though there was no exercise of the office. The general question, whether such a subject entitled to vote, they did not determine, though several of the Lords gave their opinion, —some that it did not, as Kaimes and Prestongrange; others that it did, as the President; but they rejected the vote upon this ground, that a part of the casualties of this office, particularly the serjeant corn, as it was called, appeared to them to have been given away from the office since the 1649; and as they thought the office, with its whole casualties, was extended to forty shillings, they did not think that the claimant was in the possession of all the subject which made the forty shillings of old extent. See the papers on the subject, which are very learned.

1755. *November 27.* PRIMROSE *against* PRIMROSE.

[*Fac. Coll.* No. 183.]

A MAN, who had been ill of the gout for thirty years, made a deed of settlement of his estate, at a time when he was under no immediate fit of that disease, but was rather in a better state of health than usual. In about a month thereafter, he was seized with a kind of apoplectic fit, and died in about a week after that, within sixty days from the date of the deeds.

The Lords reduced the deed, on the head of death-bed; *diss. Præside.* See *infra*, January 28, 1756.