

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 decret 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 decret, 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 decret 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 decret, 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 condescence, in order to screen the same from his creditors; but found nevertheless, that he