be putting the defender to needless expense, to compel him to produce a new extract of it.

2do, Neither is there any foundation for the pursuer's demand for production of the grounds of adjudication. It never was disputed, that after forty years it was not necessary to produce the ground of an adjudication in order to support it.

3tio, Although, from the words of the act 1617, an infeftment seems to be necessary to establish a title of prescription, yet the statute has always been explained otherwise; (*Stair, tit. Prescriptions, sec.* 23;) where it is said that the act extends to patronages or offices which are heritable rights, although not always constituted by infeftment, also to long tacks. Accordingly it has always been held that where infeftment is necessary to transmit the right, if derived *a vero domino,* so infeftment must likewise be necessary, as a title to acquire the right by prescription, when it flows *a non domino.* But when infeftment is not necessary to the constitution or transmission of any right, neither is infeftment necessary as a title to acquire such a right by prescription; and therefore, as the right to teinds, which have not previously been established by infeftment, can be transmitted without infeftment, by a right merely personal, it follows that infeftment is not necessary to establish a title to them by prescription. In this case, there is real evidence that the right of the teinds in question never was established by infeftment, as they are parsonage teinds, and are claimed by the pursuer, as patron, under the acts 1690 and 1693. If therefore a bare disposition, without infeftment, would be a sufficient title of prescription, there can be no doubt that a simple decreet of adjudication is also a sufficient title; and as to what is said by the pursuer, that such a decree is no title of prescription unless the party founding on it can instruct a right to the teinds in the person of the debtor against whom the adjudication was led, the answer is, that the only use of the positive prescription is just to supply the want of right in the party from whom the title is derived.

1758. *July* 11.—The Lords adhered to their interlocutor. Lord Kilkerran says,—"It was a parsonage on which no infeftment could pass till the year 1690, *ergo* an adjudication before the 1690, which this is, is a good title for prescription. On this reasoning the Lords adhered; and would not the argument have been the same in the case of an adjudication of any lands on whose teinds no infeftment had ever followed?"

This case is reported in *Fac. Coll. (Mor.* 10,825.)

1758. *July* 11. BURNS *against* PICKENS.

THIS case is reported by *Kames, (Sel. Dec.* No. 149, *Mor.* 5275,) and in *Fac. Coll. (Mor.* 5273.) Lord KILKERRAN'S note is as follows:—

"The act 1695 may be eluded many ways.

"1*st,* Where he serves to his predecessor last infeft, he at the same time serves *cum beneficio* to the person who was three years in possession.

"2*dly,* If in place of serving he pursues a sale.

"3*dly,* He may elude the act this way, by really borrowing money to the

extent of the whole heritage, he can have right to as apparent heir, and allowing the same to be carried off by adjudications. Nor will his creditors adjudging on his bonds, nor even his possessing upon these adjudications, give any ground of action against him to the creditors of the preceding apparent heir, who was three years in possession, though it would to the creditors of the defunct last infeft the estate were carried off for the apparent heir's debt.

"The present question in this case is, that as a creditor of the apparent heir's adjudging for the apparent heir's debt, and even such adjudger's possessing upon such adjudication, will give no action to the creditors of the apparent heir upon the act 1695, because such possession is not the apparent heir's possession, whether an adjudication on a gratuitous bond and possession upon it have a different effect, where the obtainer of the gratuitous bond has it as an absolute gift.

"1758. *July* 11.—The Lords adhered.—They thought it is equal as if the apparent heir had taken right to the adjudication and then disponed it."

1758. *July* 18. JACKSON and OTHERS *against* HALLIDAY and OTHERS.

THIS case is reported in *Fac. Coll. (Mor.* 2769.) The following is Lord KILKERRAN'S note:—

"*Nov.* 16, 1757.—On the first and general point, whether the subject was adjudgable or arrestable, the Lords altered their former interlocutor, and preferred the adjudgers.

"And by the President's casting vote that the arrestment in the hands of Duke and Brown was the only proper arrestment: this was on the supposal that the subject was arrestable.

"On the first and general point, the *President* stated it in this light, that the reversion which was on Cairoch, was not only a power to redeem the lands, but also to call for an account of the price, and that this reversion importing both points was only adjudgable, and so his opinion would have been, albeit there had been no such adjudication as that led by Grierson; and that that adjudication affords a separate consideration, *viz.* that the whole reversion was established in Grierson."

1758. *July* 18. ROBERT SYM *against* GEORGE THOMSON.

THIS case is reported in *Fac. Coll. (Mor.* 1137.) The following is Lord KILKERRAN'S note:—

"*July* 18.—The Lords altered, reduced the disposition, and remitted to the Ordinary to proceed accordingly.

"The Lords agreed that this case should be taken, as of an assignation made in Scotland.

"*Kaims*, the Ordinary, explained the ground of his interlocutor to have not