No. 3. 1751, Feb. 15. KIRK-SESSION OF HUMBIE *against* HEPBURN.

THIS question was touching the poor's money, Whether weekly collections at the Church doors, or money lent out for their use, whether the kirk-session had the whole right of administration and distribution, or if the heritors of every parish have right to join and vote with them in the distribution? 2dly, If the session has the sole right, whether they are liable to challenge at the instance of the heritors in case of maladministration or misapplication? The Lords found that the heritors have a joint right and power with the kirk-session in administration, management, and distribution of all and every of the funds belonging to the poor of the parish, as well collections as sums mortified for the use of the poor, and money stocked out upon interest, and have right to be present and join with the session in their administration, distribution, and employing such sums, without prejudice to the kirk-session to proceed in their ordinary acts of administration and application of their collections to their ordinary and incidental charities, though the heritors be not present or attend;—but for the better preventing this misapplication or embezzlement of the funds belonging to the poor, they found, that when any acts of extraordinary administration, such as uplifting money that hath been lent out, or lending or re-employing the same, shall occur, that the Minister ought to intimate a meeting from the pulpit, for taking such matters under consideration, at least 10 days before the holding of the meeting, that the heritors may have opportunities to be present and assist, if they think fit, and decerned and declared accordingly, Justice-Clerk *et me tantum renit.* and Kilkerran, who was not present. I thought they had power to call the session to account, in case of maladministration or embezzlement, because the heritors are *subsidarie* liable, failing the collections; and I thought also, when the poor were so numerous, and the fund so small, that there was a necessity for the heritors and session jointly taxing the parish, the session was bound to give the heritors' collector the half of the collections, in terms of the proclamations and acts of Council 1692 and 1693, (whereof printed copies were given us,) but in other cases, I thought that neither by the nature of the thing, nor by the municipal laws of Scotland, nor by custom, had the heritors any voice in the administration or distribution of the collections, but of these I thought the session were the sole almoners, chosen as well by the people who gave the offerings, as by the Church who appoint them.

POSSESSION.

No. 1. 1734, July 30. CARSTAIRS *against* STUART of Dunearn.

THE Lords found the presumption of life goes the length of 100 years, and that the liferentrix is presumed major at the date of the first consent to the creditors infeftments;

and found the possession ascribable to the liferent. 23d July Adhered to the last. 30th July Adhered to the whole.

No. 2. 1752, Jan. 24. GRAY of Darngavell *against* RUSSEL and OTHERS.

IN the process for division of the muir of Auchtermuir there were two questions, Whether Gray was entitled to six soums pasture more than the other feuars, because of a clause in his original feu, as old as 1618, by the family of Yester, giving him six soums more than they formerly possessed, *i. e.* before his or any other lands were feued, which the other feuars said was not giving him more than them, but making him equal with them? But as there could be no proof of the possession before 1618, he having proved immemorial possession of six soums more than the rest, the Lords presumed *retro*, and found him entitled to it. The next question was the rule of division,—Whether the act of Parliament referred to the valued rent, or the merk land, or the real rent? But as the property was in the family of Tweddale, and they had originally only common pasturage, and in 1708 the Marquis gave them a power to improve,—according to the decision betwixt Sir Robert Stewart and his Feuars, (DICT. No. 8. p. 2469.) there could be no division on the act of Parliament, since Tweddale is still proprietor, and were there any mines or minerals they would belong to him; and that addition of six soums was also a bar to dividing by the valuation; and as hitherto they had possessed equally with that exception, —therefore found the division ought to be according to their possession, 10th December 1751.—24th January Adhered, and refused a reclaiming bill on answers.

PRESCRIPTION.

No. 1. 1734, Jan. 25. MENZIES OF PITFODELS *against* TOWN OF ABERDEEN.

(This case is not mentioned in the manuscript Notes.)

No. 2. 1734, Feb. 14. ALEXANDER CRICHTON *against* EARL OF KILMARNOCK.

See No. 11, *voce* MINOR.

No. 3. 1735, June 25. THE MARQUIS OF ANNANDALE *against* LORD HOPE.

See Note of No. 12, *voce* MUTUAL CONTRACT.