and all the rent it was proved to have yielded at a time was about L.15 Scots. During the late incumbent Mr Kidd's life it fell totally in disrepair; and the present incumbent Mr M'Auley sues the executors of Kidd to repair the houses, and for damages. But we thought that a common action did not lie even for repairing of manses, or the Popish Clergy would not have suffered their manses to go into disrepair, and the acts of Parliament for remedying the abuse, particularly 8 act 21 Parl. James VI. would have been useless: That this would not fall under the statutes anent conjunct feuars and wardatars, no more than manses, nor could it fall under the laws anent manses, because it was not declared sufficient at Kidd's entry. Therefore they found that no action lies against these executors. But Kilkerran thought that if the houses had been sufficient at Kidd's entry, though no manse for the Minister, he would have been bound to uphold them. Woodhall only differed, and stated the case of the parish newly erected at Whitburn, where the heritors have bought lands, the rents whereof make up the Minister's stipend, and asked whether the Minister was not bound to uphold them.

No. 8. 1753, July 3. WILLIAM GLOAG *against* JOHN M'INTOSH.

LORD MINTO reported a question for advice upon printed minutes, Whether the 9th act 1669 anent the prescription of Ministers stipend in five years extended to vacant stipends? And we unanimously found it did. And I observed (as did Justice-Clerk after me) that that prescription was introduced not *in odium* but *in favorem* of those liable who are not in use to preserve them discharges for a great number of years: The same reason for which discharges of supply need not be produced after three years. I also observed that stipend was general, applicable to many sorts of wages, soldiers, servants, officers salaries, and they were called Ministers stipends only as a description to distinguish them from others, and in other acts they are more improperly called stipends of kirks, *vide* 52 act 1661, 13 and 20 acts 1672.

SUCCESSION.

No. 1. 1734, Feb. 5. STODDART AND RIDDELL *against* THOMSON.

THE Lords found the exheredation conveys no right to any person and does not exclude the heir at law.

No. 2. 1736, Jan. 29. DR WAUCHOPE *against* WAUCHOPE.

See Note of No. 6, *voce* MINOR.

No. 4. 1738, Feb. 16. NEAREST OF KIN OF ADAM DUNCAN, *Competing*.

I reported a bill of advocation from the Commissioners of Edinburgh at the instance of the nephews and nieces of the said Adam Duncan by his brothers and sisters who prede-

ceased him, complaining that the Commissaries had preferred James and Ann Duncan, the defunct's brother and sister, to the office of executor, and refused to conjoin them, though the defunct had his residence more than 40 years in Rotterdam and died there, and by the law of Holland (which by the law of nations must regulate the succession) nephews and nieces succeed *jure representationis et per stirpes* in place of their parents deceased jointly with their surviving uncles and aunts. The Lords, though several of them were of opinion, that the succession as well as the office as to moveables and debts in Scotland must be regulated by the law of Scotland, yet they did not incline to determine that point, but refused the bill of advocation, reserving to the complainers to be afterwards heard upon the right to the succession as accords.

No. 5. 1738, June 29. BURDEN *against* SMITH.

See Note of No. 7, *voce* MUTUAL CONTRACT.

No. 6. 1739, July 10. FULLERTON *against* DAVID KINLOCH.

IT was made a question, Whether heirs in Scotland are convenable for notes, books, debts, &c. contracted in England? where it was said heirs were not liable for debts wherein heirs were not specially mentioned and bound. (The President and Arniston seemed to differ as to the fact what was the law of England.) But the question was taken up upon this point, Whether supposing such were the law of England, the heirs in Scotland were not notwithstanding liable, because by the law of Scotland heirs are liable for such debts? The petition reclaimed against an interlocutor of mine finding the heir convenable, and the Lords pretty unanimously adhered, but Drummore seemed in the reasoning to doubt a little, and I did not hear his vote.

No. 7. 1742, Feb. 5. CREDITORS OF BIRKHILL *against* HEIRS OF AYTON.

See Note of No. 3, *voce* SERVICE OF HEIRS.

No. 8. 1742, Dec. 2. CHANCELLOR OF SKEILHILL *against* CHANCELLOR.

THE question was, Whether a brother succeeding as heir to his sister to whom another sister was executrix, might collate the heritage with the executry with his sister; or if that collation was only competent in succession to the father, and limited to the legitim, as the executrix alleged? and 2dly, Whether in a collateral succession the heir may take the heritage and likewise the half of the executry as nearest of kin? But the Lords unanimously refused both the heir and executrix's petition, and adhered to the Ordinary's interlocutor finding that the heir might collate; and that upon collation he was entitled to the half of both heritage and executry.

No. 9. 1744, Nov. 8. CREDITORS OF ROSEBERRY *against* LADIES PRIMROSE.

See Note of No. 3, *voce* HEIR-PORTIONER.