

spouses, to Robert Blyth, was *ab initio* void and null *quoad* the wife, as being granted by her during the coverture."

And, 25th June 1777, the Lords refused a reclaiming petition, without answers, and adhered.

The petition went chiefly on the doctrine laid down in the late treatise by Lord Kames, p. 2; and that any ground of reduction or exception, on account of the coverture, was cut off by the negative prescription,—the bond being much older than 40 years since granted, being dated 22d November 1693, and payable at Martinmas 1694.

1758. July 22. LADY CADBOLL *against* Her HUSBAND.

THE Lords, in the case Lady Cadboll and her husband, found, that, if a husband does not cohabit with his wife, he is bound to aliment her. But, when he again cohabits with her, the separate aliment must cease. That he may prohibit her nearest relations from visiting in his family.

They fixed the *quantum* of the aliment at the provision in the contract of marriage.

HUNTING IN INCLOSURES.

1778. March 3. The MARQUIS of TWEEDDALE *against* JOHN NISBET.

THE Marquis of Tweeddale brought an action against John Nisbet, Esq. and Others, for breaking into his inclosures, destroying his woods, breaking down his fences, &c., by hunting and pursuing game thereon with hounds and horses. Concluding for damages, and to have it declared, that no person has a right to hunt in his inclosures without his leave.

The defenders did not deny the fact; but pleaded, that by law and custom they have a right to follow the chace into inclosed grounds upon refunding any small damage they may occasion; and this they were ready to do.

9th February 1774, the Lord Auchinleck, Ordinary, pronounced this interlocutor:—"In respect, it is alleged, and not denied, that the occasion of the defenders being in the pursuer's inclosures was in actual pursuit of a fox raised without the inclosures, assoilyies, and finds expenses due."

The pursuer represented against this interlocutor, and prayed for a proof of his damages: which the Ordinary, 16th December 1775, allowed. But, in the October preceding, Mr Nisbet having reiterated his offence, *pendente processu*, and as was alleged, with aggravated circumstances, the Marquis applied to the Ordinary for an interdict, which his Lordship, 16th December 1775, re-

fused, leaving to him to apply to the Lords. He applied accordingly; and the Lords, on advising his petition, with answers for Mr Nisbet, pronounced this interlocutor:—

(February 1776.) “Prohibit and discharge the respondent, John Nisbet, Esq. from hunting or pursuing game within the petitioner’s inclosures until the issue of the cause within mentioned, still depending; and that under the penalty of £10 sterling, *toties quoties*, and decern; and allow this to be extracted immediately without abiding the minute-book.”

See 11 *New Coll.*, 9th August 1763, *Vary, &c.* against *Watson, &c.*—And Acts 1555, c. 51, renewed by Act 1685, c. 20.

In the answers for Mr Nisbet, his counsel avoided entering into the question how far a person qualified has right to beat up for game, either in his neighbours’ inclosures, or open grounds, without his leave; but they argued chiefly upon this, that if hunting was at all a lawful diversion, it followed, of consequence, that a person qualified, starting game either upon his own property, or on the property of others, from whom he had liberty, must have a right to follow the chace wherever it went.

(25th February 1778.) This day, upon advising this cause, the Lords, *renitente* Covington, were of opinion, that Captain Nisbet, &c. had no right to enter the Marquis’s inclosures either to beat up or draw cover for game, or in pursuit of game, without his leave; and that, as they had done so, they were liable in damages and expenses of process. Some of the Lords thought a ploughgate of land a sufficient title to kill game in terms of the Act 1621; others thought it required L.1000 valued rent, and the allowance of the masters of the game, in terms of the Act 1685, c. 20. They generally were of opinion, that a person entitled to kill game was entitled to hunt on uninclosed grounds, whether belonging to himself or another. Lord Elliock did not go thus far; and thought that no man, qualified or unqualified, had a title to hunt on another’s property without his leave. But they were unanimous, that, by the statute law of Scotland, as it stands, particularly the Statute 1555, c. 51, renewed by the Act 1685, no person could hunt in the inclosed grounds of another without his permission. Some thought that it was so by the common law. The notion of repaying such an invasion, by laying down damages, Lord Kaimes held to be perfectly ridiculous: he said, it was the same as if a man should take my hat off my head in the street, and then take out his purse and pay me the value of it. Damage done by hounds and horses was often inestimable, &c. &c.

3d March 1778. “Repel the defences to the action, and find the defenders not entitled to enter or come into the deer park, or other inclosures of the pursuer, without his consent, either in hunting or following of game, or for drawing cover and searching for game. Find it proven, That the defenders did, upon the 18th and 25th days of October 1773, without consent of the pursuer, come into his deer park and inclosures, with their dogs and horses, hunting, and that Mr Nisbet did draw cover for game, within the same, and that thereby they did commit a trespass. Find the defenders conjunctly and severally liable in damages to the pursuer for the trespass so committed by them, and in the expense of this process; and appoint an account of the damages and expenses to be given into Court, and decern.”

An attempt was made to distinguish between hunting a destructive animal, such as a fox, which it was said to be lawful to follow wherever he fled; and hunting a hare, an animal who did no harm, and was no common enemy. But the Lords, indeed all of them, except Lord Covington, laid no weight upon this distinction.

1777. *August* . PROCURATOR-FISCAL of DUMBARTON *against* M'GREGOR.

THE Procurator-Fiscal of Dumbartonshire, 9th September 1776, brought a complaint before the Sheriff against Robert M'Gregor, gamekeeper to Mr Speirs of Ellerslie, on the Act of Q. Anne, p. 1, § 4, c. 13, for shooting a hare. The Sheriff, 28th January 1777, found M'Gregor liable in the statutory penalty of L.20, and in expenses. M'Gregor suspended. The Lord Monbodo, August 1777, found the letters orderly proceeded: and the Lords adhered.

HYPOTHEC.

1776. *June 25.* SWINTON of MANDERSTON *against* STEWART.

THE Lords found, that a master's taking the tenant's bill for the rent, does not loose the hypothec.

1777. *February 17.* ROBERTSONS *against* BOSWELL.

BOSWELL, factor for Miss Watkins of Skedsbrish, apprehensive lest her hypothec on the stock and crop of Robertsons' tenants in the lands of Skedsbrish, lying in the parish of Gifford, should be evaded, applied, 22d September 1770, by summary petition, to the Sheriff of Haddington, for "a warrant to inventory and sequestrate the whole cattle, corn, and hay on the lands, for part of £95 of arrears, and security of the present year's rent, being £70, and expenses of application."

Upon this petition, the Sheriff immediately granted warrant, authorising the sequestration as craved. This was executed upon the lands, and intimation made, and a schedule left with the Robertsons' herd. After the sequestration had continued for three months, Mr Boswell gave in a second petition, 14th December 1770, to the Sheriff, setting forth the former; and that only a partial payment had been made of £28; and that he had reason to suspect that the