

affirmative : especially considering that, of old, Parliaments were frequent in Scotland, and now are but rare ; and that the Lords of Council and Session were the king's council, to give his Majesty their advice, in general cases, what might legally be done, whether civilly or criminally.

*Vol. I, Page 451.*

1667. *December 10.* MR JAMES STRAITON *against* The COUNTESS of HOME.

MR James Straiton, minister of Gordoun, having obtained decret conform, upon an old locality, charges my Lady Home for payment ; who suspends, and alleges, That she must be liberated of a chalder of victual contained in the decret of locality ; because, after the said decret, a part of the parish of Gordoun was dismembered, and erected in a new parish, and the Earl of Home burdened with a new stipend, and the minister of Gordoun liberated of a great part of his charge ; in consideration whereof, the minister, then incumbent, quitted a chalder of his decret of locality, and acquiesced in the rest, without ever demanding any more ; and so did his successors now by the space of sixteen or twenty years. The charger answered, That his predecessors' forbearance to lift that chalder cannot instruct his consent ; and, though he had expressly consented, he could not prejudge his successor, unless that chalder had been applied to the new kirk by sentence of a judge. The Lords found the foresaid reason relevant against the pursuer, *in possessorio*, aye and while he declare his right. Here it was represented, That the minister had a sufficient stipend beside the chalder in question.

*Vol. I, Page 492.*

1668. *January 28.* ROBERT DOBBY *against* The LADY STANYHIL, his Mother.

ROBERT Dobby pursues the Lady Stanyhil, his mother, for an aliment, upon this ground, That, she being provided to a plentiful liferent, being an annualrent of 2,800 merks yearly, there remains nothing to aliment him, the heir, of free rent, being all exhausted by the liferent and annualrent of the debt. The defender alleged Absolvitor, because there is no ground in law nor custom for an aliment to the heir, except the rents were exhausted by real burdens by infestment. But here, at the defunct's death, there was only this liferent, which was not the half of the rent, and there was no infestment more. *2dly.* Aliments are only competent to minors : The pursuer is major, and may do for himself. The pursuer answered, That it was alike whether the debts were personal or real ; for, if appraisings had been used, they would all have been real ; but the pursuer did prevent the same, by selling a part of the land at a great rate, which was all applied to the creditors, and yet the liferent and annualrent of the debt is more than the rent. Neither is there any distinction in the law as to majors and minors, who were not bred with a calling ; and therefore Carberry (who was a man of age) got an aliment ; and Anthonia Brown got an aliment from her mother, who had an annualrent in liferent, and the debts were