

of the obligation; and though the decisions of the Court had varied on this point, about the necessity of a service, yet Kilkerran observed that the latest decisions had found that a service was necessary to an heir of such an obligation in a contract of marriage, by which a father is bound to provide a sum of money to himself and the heirs of the marriage.

The decision went for the executor.

This interlocutor adhered to, 2d December 1755, by a great majority. The President put his opinion wholly upon the right of possession, which transmitted to the heir *ipso jure*, and by virtue of which he had a right to the rents and to every benefit of possession, and to defend himself in the possession, and to recover it, when lost, by every method known in the law.

1755. July 2.

M'GILLIVRAY *against* M'BEAN.

AN heritable bond bore a provision of this kind,—That if the creditor should enter to possess, he should account for the victual at the rate of the fiars of the county. Upon this heritable bond the creditor adjudged, and then entered to possess. The question was, By what rule he should account for the victual-rent of the lands about thirty years back, during which time he did possess; whether by the fiars or the current prices? And the Lords found, That, as he had not entered to possess upon the heritable bond, but had taken the advantage of legal diligence, by adjudication, he could not also take the benefit of the stipulation in the contract; and therefore found that he must account by the current prices. This they determined rather upon principles of equity than of strict law, according to which there seems to be nothing to hinder the creditor to take advantage both of the legal diligence and the stipulation in the contract.

1755. July 2. THE MINISTER of ——— *against* COLLEGE of ST ANDREW'S.

THE minister of this parish pursued an augmentation against the College of St Andrew's, as titulars of the teinds, setting forth that his stipend was only 600 merks, and craving that it might be augmented to 800 merks, the least stipend allowed by law to ministers. The defence was,—That the teinds of the parish were, by an old mortification, confirmed by the Pope, given to the Provost of the Old College of St Andrew's, and had always been possessed by him as parson; so that the minister was no more than his vicar, and upon the same footing with the ministers in the mensal churches of the bishops; and therefore had no claim for a stipend but such as the College, his parson, was pleased to allow him. But, *2do*, This stipend is already augmented, by a decree of modification and locality, in the 1710, obtained at the instance of the minister,