and the defender having renounced the succession, the pursuer obtained decree *cognitionis causa*. On this decree, the pursuer adjudged a small subject in Cupar as *in hereditate jacente* of his debtor. In this process the defender appeared and pleaded that the subject sought to be adjudged was not *in hereditate jacente* of his father, but belonged to himself as heir of his mother, to whom his mother's father had disponed the same in the following terms:—"For the love, favour, and affection he had and bore to Anna Young, his eldest lawful daughter, and to George Henderson, merchant in Cupar, her husband, and for certain other onerous causes and considerations giving, granting, and disponing to and in favour of the said Anna Young and Geo. Henderson, and longest liver of them two, and the heirs to be procreated betwixt them and their assignees whatsoever, all and hail, &c." The defender therefore maintained that this subject could not be attached for his father's debts.

It appeared that George Henderson had survived his wife.

March 5, 1757.—The Lord Ordinary found "That the subjects disponed being from the wife's father, and his name mentioned first, and being for love and favour, and not for tocher with the wife, which is previously secured by the contract of marriage, the wife was fiar, and that therefore the subject cannot be adjudged by the pursuer, a creditor of the husband, on the decree of cognition against the defender, the heir of the marriage."

In a petition against this interlocutor the pursuer referred to the following decisions in support of his argument, that the husband must be held to have been fiar:—*Bartilmo* against *Hasinting*, 2d Feb. 1632; *Graham* against *Park*, 29th Jan. 1739; *Garden* against *Sandilands*, 12th July, 1671; *Edgar* against *Sinclair*, 23d July, 1713. The Court, however, adhered. Lord KILKERRAN has the following note of the grounds of the judgment:—

"*June* 16, 1757.—The *President*, *Kilkerran*, &c. declared for the interlocutor, only *Kaimes* stated a doubt upon this clause 'and the longest liver of them,' to which the answer made was, that the fee was originally settled in some body, and in respect of the circumstances in the interlocutor mentioned, particularly that it was a mere gratuity, not a contract of marriage, that could be no other than the wife. And on the question stated, see or refuse, the Lords refused the petition."

1757. *June* 25. WALTER ANDERSON, Minister of the Gospel at Chirnside, *against* The EXECUTORS of GEORGE HOWE, the late Minister.

THIS case is reported in *Fac. Col.* (*Mor.* 14,839,) and by *Kames*, (*Sel. Dec.* 129, *Mor.* 14,843.) Lord KILKERRAN has the following note and observations upon it:—

"The act of Parliament does not say that the alteration of the stile shall not accelerate the right of parties, but only that it shall not accelerate the term of payment; in other words, the alteration of the stile does not alter the term when *dies venit*, but it does alter the term when *dies cedit* nevertheless.

"*June* 24, 1757.—It carried seven against six that the minister not having survived Michaelmas, old stile, his executors have no right to the half year's stipend due at the term of Michaelmas.

"Were this question with the executor of a minister, who had been settled after the statute, I cannot help thinking that the legal term was to be reckoned by the new stile, just as no other stile had ever been known; for that clause in the statute, that it shall not accelerate the term of payment, appears to me only to respect voluntary contracts prior to the statute, in the terms whereof the statute was not intended to make any alteration; for example, where a tenant had got a tack for a certain number of years prior to the statute, and had bound himself to pay at certain terms, the statute provides that it should not be understood to make him pay sooner. Another instance may occur,—An heritable bond does not bear annualrent *de die in diem*, but the annualrent is due by terms; and if the creditor die before Whitsunday, the executor will have no right to that term's annualrent; and accordingly, where a bond is granted, prior to the statute, and the creditor dies after the term of Whitsunday new stile, but dies before the term old stile, which is the term in his bond, the executor will not get that term's annualrent, because it was not due by the debtor, whose term of payment is not accelerated by the statute. But in both these cases of the tack and heritable bond, granted after the statute, the new stile is the rule, and can have no doubt but it would also be so with respect to minister's stipends, where the minister was settled after the statute. And if that be so, the question comes, will it make any odds that in this case he was settled before the statute?

"And it would appear to me to make none; because, as I have said, I consider that saving clause in the statute only to respect voluntary contracts, in the terms whereof the statute was not intended to make any alteration. There is no contract betwixt a minister and a parish at his admission, that they shall not be bound to pay his half-year's stipend at Michaelmas and no sooner. Now all that can be said is, that old Michaelmas is the legal term, and so long as it remains to be so, he cannot seek his stipend sooner, but so soon as the legislature alters that legal term, the new term becomes the legal term. Nor is this contradicted by the saving clause, which only respects terms of payment settled by voluntary contracts prior to the statute,—that is, there, it is the contract and not the law, which settles the term of payment; and as to what is said, that the saving clause is not only general as to all contracts, but says expressly that it shall comprehend every thing, that is or shall become payable by any Act of Parliament, the answer is, that that refers only to particular statutes directing to particular payment, but can never of acts of Parliament respecting the general dispensation of law, otherways this absurdity should follow, that the exception should be as broad as the rule, so that the act should, at the same time it altered the kalender, have born an exception which should at the same time destroy the statutory part."

1757. *August* 10. Countess of CAITHNESS *against* Her CREDITORS.

This case is reported by Kames, *(Mor. Pers.* and *Trans. App. No. I.)* Lord KILKERRAN'S note is as follows:—