"*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:—

" *August* 10, 1757.—This question was much agitated among the Lords.

" The President particularly laid it down as law, that a creditor, however alimentary, cannot affect an alimentary provision for furnishings in a prior year. On the other hand it was thought by others, that, however it may have been found, that an alimentary provision could only be affected for furnishings within the year, that could never mean more than that in competition between furnishings within the year, and prior furnishings, the furnishers within the year are preferable; but that the elapsing of a year from the date of the furnishings should forfeit the creditors' right, cannot be maintained, and one of the Lords went so far as to say, that if it was law, it was one instance of a contradiction of law to common sense.

" The *President,* in prosecution of the aforesaid proposition, further said, that, as we had modified L.200 of aliment to the lady, which the House of Peers had affirmed, this was a proper aliment, and to be judged of by the rules that govern alimentary provisions, and added, that we could not decern any thing to a wife separate from her husband, but as an aliment; and concluded that the lady ought in this case to be preferred to the creditors.

" The answer to this was in part made, supposing it to be proper aliment, but even that was doubted; it was a separate maintenance it is true, but not strictly alimentary, when so great an addition was made to her former provision; and to suppose that given to superfluities, when her creditors who had furnished to her, when she had little to spare her, (for all the debts were open accounts of furnishings,) were to catch at words and neglect things.

" The Lords preferred the Creditors to the extent of the L.100, to which they had acquiesced in her preference."

1757. *November* 15. AGNES LOGAN and her children *against* ANDREW CAMPBELL.

This case is reported by Kames, (*Sel. Dec. No.* 126; *Mor.* 3230, and in *Fac. Coll. Mor.* 3232.) The following is Lord KILKERRAN'S note upon the question which it involved.

" *February* 27, 1757.—A hearing in presence on this point, how far a man can on death-bed make rational provisions for his children, which may be thought not unreasonable; but after a series of decisions for the contrary, I thought, and said it would be a bold stroke to find so by a judgment. Lawyers were appointed for both sides. The Solicitor and Miller, Lockhart and Ferguson.

" *February* 24, 1757.—Upon this hearing, the Lords found, agreeable to the opinion of all our lawyers, and the series of former decisions, that a father on death-bed could not make provision for his younger children. The children pled upon two grounds, 1*st,* The expediency and rationality of receding from the former decisions, where it had been so found. 2*dly,* As the Court could give an aliment, why not sustain provisions to that extent?

" With respect to the first, it was thought neither in the power of the Court to recede from the former series of decisions, nor that it would be expedient were it in their power. 1*st,* Not in their power, as one branch of our law is our con-