only be preferred *pari passu*, and agreed that a contrary law would make a terrible convulsion in our land rights. If a suit was once commenced for the Crown, an adjudication following at 20 years distance might be preferred to adjudications completed many years before. Kames put a pretty singular construction on the act *6to Annæ*, that though it gave a privilege to the Crown's causes in the Court of Exchequer, such as they had in the Court of Session with respect to being called, yet that in competition with other creditors it gave them no preference, not even on goods and chattels. But what surprised me most was, that Lord Kilkerran told me, after that decision, that he asked Mr Craigie, who was at the Bar, but not in the cause, if he had any doubt? (both of them having been King's Advocates,) and that he said he always doubted, whether the King's debts had not a preference on lands, even by the law of Scotland. *Vide* 18th July 1754, when this interlocutor was adhered to. (See Note of No. 1. *voce* KING.)

ADULTERY.

No. 1. 1744, Jan. 20. STEEDMAN *against* COWPER.

THE question was, Whether an action of damages lies by the law of Scotland for adultery against the adulterer, and whether that civil action can proceed before a criminal prosecution? We had no difficulty as to the first; but as to the second we differed. Royston and some others thought it not competent till conviction, but it carried by a great majority, that it is competent before us in the first instance; of which opinion I was, as was the President—17th June 1743.—Adhered, 29th June, and refused a bill without answers.

UPON advising the proof in this action of damages, the defenders disputed, that the defender's adultery with the pursuer's wife was not proved. But their chief defences were, That they had proved her guilty with three other men before Couper came acquainted with her; *2dly*, That from the proof, there was reason to believe that the pursuer's wife rather seduced the defender than he her. In giving our opinions, Arniston thought, that by the law of Scotland, action did not lie, as did Kilkerran; but that point was settled by our interlocutor of 17th and 29th June last. First we found the libel proved without a vote,—next we found no sufficient defence, and found the defender liable in the expenses of the former process of divorce and appeal, and of this process,—to give in an account of his damage through loss of business,—and remitted to the Ordinary to tax the same.—20th January.

ADVOCATE.

No. 1. 1743, Nov. 25. GARDEN of Troup *against* MR RIGG.

THE Lords found, that indefinite receipts of money in part payment of what the payer owed were no interruption of prescription of any particular debt, and likewise that a general submission of all claggs and claims, without proving that that particular debt was claimed, or where the submission was totally cancelled, was no interruption,—and that a trustee who uplifted his employer's money and applied it to his own use, but acquainted his employer of his having done so, was not liable for annualrent. Lastly, That Mr Rigg

being Mr Arrat's ordinary lawyer, could not object the nullity of the form of the bills he had granted Mr Arrat, that they bore annualrent and penalty, although the bills were written by Mr Arrat the drawer.—Adhered, 7th December, by President's casting vote.

ADVOCATION.

No. 1. 1734, July 24. MONRO *against* M'MILLAN.

THE Lords found a cause within 200 merks could not be advocated even upon iniquity, but remitted to the Ordinary to remit the cause with such instructions as he shall find proper.

No. 2. 1750, July 26. JAMES URE *against* BUCHANAN.

THE Lords found, that in processes in the Sheriff-Court under L.12 sterling, as we cannot advocate, so we cannot remit with instructions; and therefore Strichen having remitted this cause with instructions, we altered and remitted to the Sheriff to proceed as he should think fit.

*** We gave the same interlocutor in an advocation 30th November 1750, Thomson against Vallange, of a sum under L.12, as we did 26th July last, Ure against Buchanan. We recalled the remit with instructions, and recommended to him to refuse the bill of advocation *simpliciter*.

ALIMENT.

No. 1. 1734, July 12. COUNTESS of WEMYSS *against* HER CHILDREN.

THE Lords found no aliment due for the children.

No. 2. 1736, Feb. 4. VANS *against* VANS.

THE Lords found, that the whole pay must be accounted for without any abatement for the aliment, as had been before judged in the case of Lord Kimmergham's creditors and daughter. Royston and I differed, because an officer's pay is in construction of law alimentary, and for that reason alimentary; and therefore, though a father alimenting *præsumitur* to do it *ex pietate*, which will even preponderate the presumption *debitor non præsumitur donare* in the case of a common debt, which was Lord Kimmergham's case, yet a father uplifting an alimentary provision of his bairns, and accordingly alimenting, is presumed to do it out of their proper fund.

THE Lords found Patrick Vans's pay uplifted by his father as administrator-in-law did not bear annualrent, in respect he alimented him; and I think the judgment right, but how does it tally with the former one of 4th February last?—29th June.

No. 3. 1736, Feb. 13. CREDITORS and CHILDREN of FALCONER.

MR MERCER, the trustee for the daughter, having got no payment, we were pretty unanimous that he should be preferred upon each subject in his proper order, and that