fore the date of the act, but after 1652 to the year 1664, did not run against minors;—only the Ordinary seemed to doubt. But they demurred greatly as to the other points, viz. Whether the bygone rents or annualrents of the apprising before the appriser's death, divide between his heir and executor, or if the whole went to the heir? 2*do*, If they divide, Whether the apprising could be declared satisfied even against the heir unless the bygones were also paid to the executor? They therefore remitted to the Ordinary to hear parties further to the end they might search into precedents; when poor Lord Newhall, Reporter, before he left the table, was seized with a fit of sickness, whereof he died the 14th.

No. 9. 1737, June 30. WATSON *against* MR JAMES BAILLIE.

THE Lords found this special adjudication only redeemable on payment of principal, annualrents, and one-fifth part more; though several of us had great difficulty upon the words of the act 1672; and indeed we rather inclined to think, that by these words there could be no accumulation in the adjudication of a fifth part more; but what determined us was the act of sederunt 26th February 1684, determining the meaning of that clause in the act.

No. 10. 1737, July 15. AITCHISON'S ASSIGNEES *against* DRUMMOND.

THE Lords were clear that the contract 1675 was good against Brown and Miln, the onerous singular successors; also that it is not prescribed. They likewise agreed that Stewart's intromissions, (though he was one of James Pollock's successors) yet having right only to the half of the adjudication, could only be imputed to that half, and that the case had been the same though he had intromitted as pro-tutor to his sister-in-law, afterwards Aitchison's wife, unless he had truly been her tutor. They found also that Miln and Brown's own intromissions must impute to Pollock's adjudication, and not to Pott's apprising, not only because as early as 1724, Sir Gilbert Elliot and Baird's rights to Pott's apprising, were preferred to Aitchison's; but likewise because the contract 1675 was effectual against them. But the greatest difficulty was, Whether Aitchison's oath was competent against them, the onerous assignees of William Murray, since his right from Aitchison bore to be love and favour. The Lords demurred upon this point, and delayed giving any interlocutor till next day, when they generally inclined to find it not competent on that ground; but then they found the subject had been litigious before Brown and Miln's purchase; upon that ground they found Aitchison's oath competent; and though at first I thought it competent on the other ground, yet when I considered the first decision, finding a cedent's oath competent against a gratuitous assignee, which Stair observes in 1665, I doubted whether the reasons of that decision would extend to an onerous purchaser from that gratuitous assignee.—15th July the Lords adhered, but remitted the point of collusion.—June 23-4, 1737.

No. 11. 1737, July 22. MR FREEBAIRN *against* BLAIR and NAIRN.

THE Lords repelled the defence, and adjudged the office of printer. They would not give their interlocutor that the subject was adjudgable, since the Crown, which had

the only interest in that question, was not in the field; but, as above, they repelled the defences.—February 8th 1737.

This case was first judged the 8th of February, as is there marked, but the interlocutor is repelling the defence, and finding the within subject of office of King's Printer adjudgable. The Lords, after long debate, adhered. Arniston thought it not adjudgable; and the President was of opinion of the interlocutor; Kilkerran thought the Crown could not grant it to assignees, but that Mr Freebairn, who took the right to assignees, could not object that.—July 22d 1737.

No. 12 and No. 13. 1737, July 22. CREDITORS of MAXWELL, viz. BROWN, &c.

A DECREET of constitution being pronounced 30 years ago, by special warrant from the Inner-House, that the creditor might adjudge, in order to come in *pari passu* with a prior adjudger, without any proof of the passive titles, and being now quarrelled because there is no proof of the passive titles, and the creditor producing a general charge prior to the decreet; the Lords would not sustain that general charge as a passive title, because it was not libelled in the process of constitution; but they allowed the creditor yet to support his diligence by proving the other passive titles, notwithstanding the defender in that decreet is now dead.

In the same process, an objection against another adjudication led about 30 years ago, that the special charge was not executed against the tutors and curators, at least neither the libel nor decreet of adjudication bear so, nor are these letters or executions now produced;—the Lords sustained the objection, but not to reduce the adjudication *in toto*, but to restrict it to a security;—22d July, Brown of Mollance found he could have no proof of the passive titles, and therefore gave up the adjudication, and the Lords accordingly found it null, and adhered to the former interlocutor, as to the other adjudication.—8th June,—22d July 1737.

No. 14. 1737, Nov. 8. CHALMERS *against* CUNNINGHAM.

IN this process, a very general question, and of great importance occurred. The case was, that there was an adjudication and infeftment upon it, and then there were many adjudications within year and day, whereon no infeftment followed, and then an infeftment of annualrent, and thereafter some more adjudications, which I think were also within year and day of this first. The question was, How the annualrent was to be preferred in competition with both prior and posterior adjudications, whereon there was no infeftment? The Lords found, that Nethergremont's infeftment of annualrent is preferable to all adjudications, whether prior or posterior, on which no infeftment followed, notwithstanding that they were within year and day of the first effectual adjudications on which infeftment followed prior to the said annualrent, and therefore adhered to the Ordinary's interlocutor, finding that Nethergremont's debt ought to be stated *in computo*.

THE Lords first found, that if Sir David Cunningham got any cases in purchasing the adjudications against Drumgrange, he was bound to communicate the same in so far as concerned the adjudication upon Gadgirth to Captain Chalmers, without distinguishing whether Sir David purchased these adjudications within the legal or not: