

and it carried by a great majority, though I own against my opinion; because Sir David, in purchasing these adjudications, became creditor to Drumgrange in the whole debt purchased, whereof he was not bound to give Drumgrange the benefit of the ease; and if he was creditor to Drumgrange in the whole sum, then the adjudication against Gadgirth was conveyed to him only in security of that debt, since an adjudication within the legal is only a security, and therefore he could not be said to have got any ease of the adjudication on Gadgirth.—21st June 1738.

THE LORDS found, that Captain Chalmers had the benefit of the eases even of Drumgrange's adjudication at least of the adjudication of his own estate, carried by them; and extended the rule of a modification, which they had laid down in other cases where the eases did not appear, to this case also. *Me et quibusdam aliis renitentibus.*—27th June 1738.

No. 15. 1737, Nov. 10. A. against B.

STRICHEN reported a question of an adjudication, Whether it was a good answer to the effect of a progress that there were inhibitions against the defender, though these inhibitions were after the pursuer's debts? The President, Royston, and Arniston thought the estate must be unencumbered, and the creditor is not obliged to dispute the validity of that encumbrance, or his preference to it, because the inhibition is not in the field. And upon the question, it carried to sustain the objection to the progress, *sed multi in contraria fuerunt opinione inter quos Ego.*

No. 16 1737, Nov. 17. CORSAN against MAXWELL.

THE LORDS found the petitioner liable for repetition of the rents only from the date of the first interlocutor opening the legal of the adjudication, and restricting it to a security.—Adhered 17th November.—4th November 1737.

THE LORDS found, that in so far as the personal debts in the defender's person can compete with the pursuer's debts, and adjudication thereon, the defender's super-intromissions ought to be imputed in extinction of it, reserving to the defender to make use of the same against the heir as accords; and refused the defender's counter-petition, praying that he might be allowed to redeem the pursuer's adjudication on payment of principal annualrents and expenses; for we thought that the inhibition secured the adjudication, as well as the debt in the bond.—26th January 1738.

No. 17. 1737, Dec. 23. KERR against BRIGHTON, (or CRIGHTON.)

THE LORDS were very unwilling to determine the general point, Whether there can be a negative prescription of a right of property, without a positive prescription in another? But they thought that an adjudication against an apparent-heir of one who died about a century ago, whose propinquity is denied, is not sufficient to the Ordinary to take a proof of that propinquity.

No. 18. 1738, Feb. 14. ELIZABETH BALFOUR against WILKIESON.

UPON a division it carried to sustain the adjudication as a security for principal sum, annualrents, and necessary expenses, and annualrents thereof, from the date