

1737. *June 30.* WATSON of Saughton, *against* Mr. JAMES BAILLIE.

It being disputed in special adjudications, if the principal, annualrents, and a fifth part more should be accumulated, and that accumulated sum paid at redemption, or if lands only of that value should be adjudged in payment of the principal and annualrents only accumulated, so as only that principal and annual rents so accumulated should be paid at redemption; but in case of expiry of the legal, the whole lands adjudged worth the principal and annual rents, and a fifth part more should be irredeemable: The Lords thought this last most agreeable to the words of the act 1672: But in respect of the express words of the act of sederunt, 26th February 1684, constructing it otherwise, They found that a fifth part more than the sum should be adjudged for and paid at redemption. (See DICT. No. 10. p. 88.)

No. 9.  
Of what the sum paid at redemption ought to consist?

1737. *July 15.* AITCHISON'S ASSIGNEES *against* DRUMMOND.

APPRISER leaving two heirs portioners, the intromissions of one are only imputable to her own half, though they exceed it, and though the other has recovered a decret against the intromitter for the half of her intromissions, unless she has also recovered payment: But the apprising will subsist *quoad* the half of the heir who did not intromit.

No. 10.

1737. *July 22.* Mr. ROBERT FREEBAIRN *against* BLAIR and NAIRN.

OFFICE of king's printer being given by patent for a term of years, to Mr. Robert Freebairn, and his assignees and substitutes, was found adjudgable by his creditors, and actually adjudged. (See DICT. No. 16. p. 148.)

No. 11.

1737. *July 22.*

CREDITORS of MAXWELL of Newlaw, viz. BROWN of Mollance.

A CONSTITUTION pronounced 30 years ago, by special warrants of the Lords, that the adjudication might be within year and day of a prior adjudger, but without any proof of passive titles, and an adjudication upon it being quarrelled, because the passive titles were not proven, The Lords would not sustain the passive title of charged to enter heir upon a general charge produced prior to the decret, in respect that passive titles were not

No. 12.  
To support a constitution, as the foundation of an adjudication, there must be evidence of the passive titles, but that evidence may be adduced *ex post facto*.

- No 12. libelled in the process of constitution : But allowed the creditor to support his decret by proving the passive titles libelled, though the defender in that decret is now dead. And the creditor having past from any further proof of the passive titles, the Lords reduced the adjudication *in toto*.

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1737. July 22.

SAME PARTIES.

No. 13.

AN objection that the defender's tutors and curators in the adjudication were not charged upon the special charge, that is, that it was not executed against them, was sustained, though after 30 years, to restrict the adjudication to a security for principal annualrents and necessary expenses.

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1737. November 8.

CHALMERS *against* CUNNINGHAM.

No. 14

THE Lords found an infestment of annualrent preferable to all adjudications, whether prior or posterior to it, on which no infestment followed, notwithstanding they were within year and day of the first effectual adjudication.

\* \* \* See the particulars *voce* COMPETITION.

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1737. November 10.

A. *against* B.

No. 15.

THE creditor not obliged to accept of a progress, and cannot be limited to a special adjudication, unless the land be quite unincumbered; and therefore a progress being offered, the answer was sustained, that the defender stood inhibited, though after contracting the pursuer's debt.

STRICHEN, *Reporter*. *Vide* INHIBITION.

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1737. November 17.

CORSAN *against* MAXWELL.

No. 16.

AN adjudger in possession, who had also a disposition from his debtor, which was reduced *ex capite inhibitiones*, was found liable in repetition of the rents only from the date of the interlocutor opening the legal of his adjudication. His intromissions before that period were found not to be imputed in extinction even of personal debts in the adjudger's person other than such as could compete with the pursuer's debts and diligence.

\* \* \* See the particulars *voce* BONA FIDE PAYMENT, *et voce* INHIBITION.