

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 venientibus*.—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

of the adjudication;—and I do not much differ as to the principal sum and annualrents, for the want of the annualrents may justly enough be considered as a real damage, from which the adjudger's *bona fides* might save him; and annualrents are often given *nomine damni* of sums that by law do not bear annualrent, and are by act of sederunt due after horning and denunciation; and therefore it seems to be no stretch of the *nobile officium* to give them after adjudication, though erroneously led for more than was due, but led *bona fide*; but to make expenses a capital bearing interest 10 or 20 years before they are taxed, or can be known, which here is not yet done, I cannot so easily agree with.—Arniston, and several others, were against all accumulations, and for sustaining it for a security only of principal, annualrents, and necessary expenses.

No. 19. 1738, July (25) 27. AINSLIE *against* WATSON.

THE Lords adhered to the Ordinary's interlocutor, and found that the 40 years does not exclude the objections to the adjudications, which may be reconciled to the former decisions of the Court, as to the nullities appearing *ex facie* of the decret; but I own I did not think it reconcilable with them as to the extrinsic proof.

No. 20. 1738, Dec. 1. RAMSAY *against* BROWNLIE.

THE point in dispute betwixt the parties, mentioned December 7th 1736, was for the first time determined this day, after a very full hearing in presence, when it was found unanimously, that an appriser dying within the legal, the right of apprising, (or adjudication) and whole sums therein contained, descended to his heir, and no part of it to his executor; for we considered it as a right of lands redeemable in a limited time, and not as a security for debt; and indeed the matter would be quite inextricable, were it otherwise, especially after the legal, because by no form hitherto devised, could the executor make a title to the lands; but if an apprising were, according to our late practice, restricted to a security, so as it would never expire, I doubt the case would be different, at least as to subsequent annualrents. *Qdo*, After an apprising is expired, the appriser carries not only the property, but has also action for the bygone fruits during the legal against the tenants and all intromitters that cannot defend themselves by a better title or *bona fides*. *Query*, therefore, does not that action for bygone rents go to executors, and should he die within the legal, to whom will that action for bygones go? This does not want difficulty, for should it go to executors, these bygone rents may exceed the whole sums in the apprising, and many inconveniences, or rather absurdities, might follow. It is strange that these questions have never been decided. Adhered unanimously 1st December.—2d February 1738.

No. 21. 1739, Jan. 9. YORK-BUILDINGS COMPANY'S CREDITORS *against* BILLERS.

THE Lords sustained several reasons of reduction of this odd trust-infestment, particularly they found a disposition and precept of sasine in general, for all the Company's lands, was no warrant for infesting in any particular lands, and therefore found the in-