

of the adjudication;—and I do not much differ as to the principal sum and annual-rents, for the want of the annual-rents may justly enough be considered as a real damage, from which the adjudger's *bona fides* might save him; and annual-rents are often given *nomine damni* of sums that by law do not bear annual-rent, 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, annual-rents, 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 decreet; 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 annual-rents. *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 by-gones 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-