to hear it debated betwixt the President and Arniston, the two lawyers who had argued it in the former process, in 1733, betwixt these parties. But Arniston was the first who gave his opinion, strong in express contradiction to the argument he had then maintained, (and indeed convinced me, as per my note a part in this case,) and the President agreeing with him, none of us opposed. 3*tio*, We found this point not determined by the former decreet, where the Inner-House interlocutor only found no sufficient evidence of the trust of the disposition, and the Ordinary only applied that interlocutor. 4*to*, We found that the pursuer was not barred by the transaction in 1717, when it was not known that his elder brother was dead, and therefore the ratification of Milton's adjudications could only be for all right the pursuer then had. 5*to*, That the 7000 merks paid Milton by that transaction, though not out of the common debtor's money, but for a conveyance of Blairgham, and houses in Glasgow, part of the subjects adjudged by Milton, must be imputed towards satisfaction of the debts due to him, agreeably to the decision 14th January 1669, M'Kenzie against Ross, (DICT. No. 10, p. 299.)

No. 31. 1741, July 23. EARL of ABERDEEN *against* SCOTT'S CREDITORS.

REMIT to the Ordinary to hear on the petition and answers, and report, 1st June. This was on a suggestion of Arniston, very new, that the payment recovered on the ranking and preference, should be applied not to the annualrents of the accumulate sum, but to the accumulate sum itself. But upon the report, the Lords made no difficulty, nor was there so much as an argument on this new point of Arniston's; and we found, as prayed in the petition, that the payment on the forthcoming must be applied to the annualrents of the principal sum after the adjudication (whereby we allowed the creditor the application to the annualrents last growing due, and not to those first growing due, to save his adjudication entire.) 2*dly*, That the money recovered on the ranking must be applied first to the annualrent, next to the accumulate sum, without restricting the penalty.—27th February, 1741.

No. 32. 1741, Nov. 17. CREDITORS of STEUART, *Competing*.

THE question was, Whether a charge to a superior to enter an adjudger without offer of a year's rent and a charter (which alone is sufficient to exclude the superior's casualties, according to the decision 9th February 1669, Black and French) * if such an offer was necessary,—and consequently that a subsequent adjudger infeft ought to be deemed the first effectual adjudication? And the Lords adhered to the Ordinary's interlocutor, finding the offer of a year's rent and charter not necessary to give the adjudication the benefit of being the first effectual one; and also adhered to the second branch, finding the posterior adjudger not entitled to the expenses of his infeftment. President against both. Arniston was doubtful of the first, but voted and was clear as to the last.

No. 33. 1742, Feb. 27. GILBERT STEUART *against* MR DAVID COUPAR

THE Lords found, that Mr Steuart, adjudger, having charged Mr Coupar to infeft him in an annualrent, Mr Coupar could not claim a year's rent,—and adhered to the

* DICT. No. 30. p. 6911.

Ordinary's interlocutor. This being an annualrent effeiring to a principal sum, and redeemable for payment of a principal sum, 27th February, the Lords adhered, and refused a bill without answers.—20th February 1742.

No. 34. 1742, July 20. HUNTER of Lochreny *against* HUNTERS.

AN adjudication led against an heir as specially charged to enter heir, where the special charge was blank in the lands, but the heir, after the adjudication, entered in the lands,—and after 20 years the creditor pursues an expiry of the legal, and produced the letters of special charge. The Lords sustained the objection, and assoilzied from the declarator, notwithstanding the heir's subsequent entry, and notwithstanding that it was after 20 years, since the pursuer produced the special charge; and some of us, (Arniston and *Ego*) thought it void and null *in toto*. But there was no occasion in this process to determine that point.—3d July 1741.

AN adjudication on a special charge to enter heir, which remains yet blank in the lands, and which was produced by the creditor, though the adjudication was in 1705, but after the adjudication, the heir charged was entered and infeft;—we all agreed the adjudication was null. The only question was, Whether as to the *jus superveniens?* We also agreed that it could not accresce to give the adjudication the benefit of an expired legal, which he sought; but then it was doubted, whether in the question with the heir it should not subsist as a security for what is justly due? But as the process was a declarator of expiry of the legal, and no process of mails and duties, we simply adhered to the Ordinary's interlocutor, finding it void and null, which, however, is contrary to the decision betwixt Colonel Charteris and Sir John Hume.

No. 35. 1742, Dec. 14. KING *against* ———.

AN adjudication *cognitionis causa* before a Sheriff-Court being passed without any abbreviate, a bill of horning was presented and reported by Strichen, and delayed from time to time till this day; and the first question was, Whether the regulations 1695 and 1696 extend to adjudications *cognitionis causa* in inferior Courts, whereof formerly there was no abbreviate? and it seemed clear enough that these regulations only concern the Session. But then it also appeared that there was no authority from our giving horning on these adjudications against superiors, who are not called in the process and often not within the jurisdiction, which the act 1606 could not authorize; and though there was practice for our giving horning on such adjudications having abbreviates, (however there appears no authority even for that) that there was no practice for such horning without abbreviates;—and therefore the Lords refused the horning,—but appointed a committee, Drummore, Arniston, *et Me*, to make an act of sederunt for giving horning upon such adjudications with abbreviates;—and on a reclaiming bill, 14th December, adhered.—2d December 1742.

No. 36. 1743, Feb. 15. MAXWELL *against* MAXWELL.

AN adjudication upon two debts of 500 and 490 merks being quarrelled, for that the bill at the Signet was only for one debt, and a summons never does