pass upon two bills, and the Writers to the Signet certify that such is not the practice, and they doubted it could not be; at making this objection, a certificate was produced by William Roy to the Ordinary, that such a bill was at the Signet. But the Ordinary having desired to see the bill, it was produced before the Ordinary by Mr Roy, but who was not proper Keeper of the Signet. Thereafter that bill was also lost, or abstracted, and the case taken to report by the Ordinary. Most of us thought, though Roy was not the proper officer, that there being no complaint for more than a year after the bill was produced before the Ordinary, there was sufficient evidence that this bill was at the Signet; but Arniston doubted as to that. But the other point was more doubtful, and long and fully argued.—Arniston and President carried it so far as to doubt, whether an objection lay against any diligence for the want of the bills, the warrants of the summons or letters, at the Signet? but supposing they were, yet as this was after 20 years, when the party is not answerable for warrants,—and here there might have been a bill for the other debt, or the doer might, upon discovering his mistake, take a new bill of the same date for both debts;—though others observed, that if that was a good answer to an objection that any process was without warrant or disconform to the warrants, it would be so in every case after 20 years. However, it carried by the President's casting vote not to sustain the objection, even to open the legal of the adjudication. Kilkerran and Murkle did not vote, and Justice-Clerk was in the Outer-House.

We unanimously repelled another objection, that the libel of the adjudication in the first alternative libelled principal annualrent and a fifth more of penalty. 15th February, They adhered, and refused a bill without answers by the President's casting vote.—4th February 1743.

No. 37. 1746, June 19. MR JOHN ERSKINE *against* MRS KENNEDY.

FOUND that Mr Erskine being in possession on a title of property, may object that the pursuer's debtor, Sir John Blackadder, is not heir in the lands,—and therefore remitted to the Ordinary to enquire whether the lands were descendable to heirs-male.

No. 38. 1747, Nov. 6. ROSS *against* CREDITORS of EASTERFERN.

THE Lords *nemine contradicente*, adhered to Drummore's interlocutor, sustained an adjudication as a security for the sums truly due, even in a ranking of creditors, though for near eight times as much as was due, viz. L.9540, though there was a settled account before, making the sum due only L.1284. My reasons were;—that reducing it *in toto*, was penal and contrary to equity; that a decreet of constitution would be so restricted and sustained, and I saw no difference now betwixt a decreet of constitution and adjudication; that when no more was apprised than lands equal to the sum, and that by a sworn inquest, a *pluris petitio* behoved to be a total nullity, because not only the sum must be restricted, but some of the lands struck off, which could only be done by a new inquest; that by regulation 1695, decreets were only to be reduced on nullities, to repone against the injury done, and no further; and that this adjudication was a decreet *in foro contentioso*, where every objection was either competent and omitted, or proponed and repelled; and we could repone against it only in equity, and that equity could not annul it altogether. Arniston added, that special adjudications must, as to this