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

point, be in the same case with apprisings of old, and that he always was against annulling such adjudications altogether, and against sustaining them for accumulations

No. 39. 1750, Jan. 12. ORME *against* WILSON.

IN consideration of many objections to an adjudication reported by me, and a long discussion, the Lords sustained the adjudication for principal sum and annualrent, and necessary expenses, but without accumulations. It carried by a great majority.—*Sed renitentibus* Kilkerran, and some others.—2d January 1750.

No. 40. 1751, Nov. 29. PROVOST of ABERDEEN, *Supplicant.*

THE first adjudication of Burnet's estate is dated 30th November 1750. Pro. Aberdeen, as trustee for certain pursued adjudications, whereof the last day of compearance was the 28th of this month, therefore yesterday called his summons, and at night gave in his bill, praying warrant to enrol to-morrow in the regulation-roll (though Saturday) in order to be decerned for that day; and other two creditors, Elizabeth Brown and George Moir, whose last day of compearance was 30th November, applied for the like warrant. We granted Provost Aberdeen's, because the days of compearance was past; but we refused the other two, because their process was not legally in Court, and no decreet could regularly be pronounced on the very day of compearance. But on the 30th we granted it to them also on a new bill, because the day of compearance was come. *Me renitente.*

No. 41. 1752, Jan. 22. STRACHAN *against* CREDITORS of STRACHAN.

STRACHAN of Dalhackie being bound by his contract of marriage to pay certain sums to the children to be procreated, according to their number, at the terms of payment therein mentioned, and in the mean time to aliment them, Ludovick, the only son, took a decreet of L.20 sterling of yearly aliment till his portion should fall due, and thereupon and upon the obligement in the contract for the portion, adjudication in security. But in the competition of creditors, we found that he could not upon the indefinite obligement to aliment, compete with his father's onerous creditors. But we repelled the other objections to the adjudication, viz. that in the decreet of constitution of the aliment or adjudication in security, he had not brought a proof against his father, that he was a son, or the only child of the marriage; that he had no decreet of constitution of the aliment, but had adjudged on the contract; and that he had not libelled the two alternatives of the act 1672;—in respect it was only an adjudication in security, and not in payment, which he could not have, the term of payment not being come.

No. 42. 1752, Jan. 22. M'CULLOCH *against* ROSS.

IN a question, Whether compensation can be proponed against sums in an adjudication? The Lords found, that though an adjudger is not bound to propone compensation against himself, yet it is receivable in the process of maills and duties not to annul the adjudication, but to restrict it, and extinguish so much of the debt.