

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. *3tio*, 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. *4to*, 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. *5to*, 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.) *2dly*, 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 infest 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 infestment. 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 infest him in an annualrent, Mr Coupar could not claim a year's rent,—and adhered to the

* Dict. No. 30. p. 6911.