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

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