

No. 44. 1752, July 2. ALEXANDER BREBNER *against* WILSON.

I had found an adjudication on a decret *cognitionis causa* null, for that it was pronounced before the decret *cognitionis causa* was extracted, though it was extracted before the adjudication was extracted, and on a representation, and after advising with the Lords, had adhered; and this day the Lords adhered, *nem. con.* and refused a bill without answers.—N. B. I asked John White, the Under-Clerk, what was the practice? and he told me it was agreeable to my interlocutor. But the President thought the practice of inserting the libel of constitution on charges to enter heir and *cognitionis causa*, and then, after that is extracted, another Ordinary decerning in the adjudication on the same summons, was all erroneous, and that in law all these adjudications were void and null.

No. 45. 1753, Feb. 6. CREDITORS of GRAHAM *against* HYSLOP.

THESE creditors had right by progress to an adjudication in 1701 before the Sheriff of Edinburgh, on a decret *cognitionis causa* against the heir of Mr Robert Richardson, of an heritable bond by the Viscount of Stormont in 1662 to Mr John Carnichael, and conveyed to Richardson, obliging the Viscount to infest the creditor in an annualrent efferring to 4000 merks, in all his lands in Scotland, without naming any, with a precept of sasine in the same general terms. Hyslop again had right to an adjudication in a decret *cognitionis causa* on the same bond in the Court of Session in 1703, and objected to the adjudication of the creditors of Mungo Graham, that it was by an incompetent judge, because the Viscount of Stormont had no land in the county of Edinburgh. I reported the case on printed minutes,—and the Lords sustained the objection, and found Graham's adjudication void and null,—though we generally agreed that the Sheriff has power to adjudge *cognitionis causa* lands within his county, and that such adjudication of a bond secluding executors would be good.—3d August, Adhered.

No. 46. 1753, Nov. 16. MURRAY *against* CREDITORS of BURNET.

MR MURRAY recovered adjudication against Burnet's lands for payment of a large sum of money, and after him, but within year and day, his other creditors also adjudged; and in the ranking Mr Murray insisted to be preferred to the whole other creditors, though within year and day of him, upon the act 6to *Annæ*, establishing the Court of Exchequer, and the act 33d Henry VIII. of England. And the Lord Advocate, in his information, maintained, that it was competent for him to have adjudged in the Court of Exchequer, and the Crown was entitled to the like preference on lands as upon goods and chattels by a writ of extent. The creditors, on the other hand insisted, that by the act 6to *Annæ*, land-estates cannot be affected in any other manner or form than was agreeable to the laws of Scotland before the Union. That adjudications and abbreviates were quite unknown in the form of the Exchequer Court, and no other adjudication could be available in Scotland than what were founded on our act 1672, and adjudication *cognitionis causa*; and that by the same act 6to *Annæ*, the preference could only be determined in the Court of Session, and agreeable to the laws of Scotland. We all gave our opinions *separatim* on this important question, and unanimously found that Murray could