the only interest in that question, was not in the field; but, as above, they repelled the defences.—February 8th 1737.

This case was first judged the 8th of February, as is there marked, but the interlocutor is repelling the defence, and finding the within subject of office of King's Printer adjudgable. The Lords, after long debate, adhered. Arniston thought it not adjudgable; and the President was of opinion of the interlocutor; Kilkerran thought the Crown could not grant it to assignees, but that Mr Freebairn, who took the right to assignees, could not object that.—July 22d 1737.

No. 12 and No. 13. 1737, July 22. CREDITORS of MAXWELL, viz. BROWN, &c.

A DECREET of constitution being pronounced 30 years ago, by special warrant from the Inner-House, that the creditor might adjudge, in order to come in *pari passu* with a prior adjudger, without any proof of the passive titles, and being now quarrelled because there is no proof of the passive titles, and the creditor producing a general charge prior to the decreet; the Lords would not sustain that general charge as a passive title, because it was not libelled in the process of constitution; but they allowed the creditor yet to support his diligence by proving the other passive titles, notwithstanding the defender in that decreet is now dead.

In the same process, an objection against another adjudication led about 30 years ago, that the special charge was not executed against the tutors and curators, at least neither the libel nor decreet of adjudication bear so, nor are these letters or executions now produced;—the Lords sustained the objection, but not to reduce the adjudication *in toto*, but to restrict it to a security;—22d July, Brown of Mollance found he could have no proof of the passive titles, and therefore gave up the adjudication, and the Lords accordingly found it null, and adhered to the former interlocutor, as to the other adjudication.—8th June,—22d July 1737.

No. 14. 1737, Nov. 8. CHALMERS *against* CUNNINGHAM.

IN this process, a very general question, and of great importance occurred. The case was, that there was an adjudication and infeftment upon it, and then there were many adjudications within year and day, whereon no infeftment followed, and then an infeftment of annualrent, and thereafter some more adjudications, which I think were also within year and day of this first. The question was, How the annualrent was to be preferred in competition with both prior and posterior adjudications, whereon there was no infeftment? The Lords found, that Nethergremont's infeftment of annualrent is preferable to all adjudications, whether prior or posterior, on which no infeftment followed, notwithstanding that they were within year and day of the first effectual adjudications on which infeftment followed prior to the said annualrent, and therefore adhered to the Ordinary's interlocutor, finding that Nethergremont's debt ought to be stated *in computo*.

THE Lords first found, that if Sir David Cunningham got any cases in purchasing the adjudications against Drumgrange, he was bound to communicate the same in so far as concerned the adjudication upon Gadgirth to Captain Chalmers, without distinguishing whether Sir David purchased these adjudications within the legal or not:

and it carried by a great majority, though I own against my opinion; because Sir David, in purchasing these adjudications, became creditor to Drumgrange in the whole debt purchased, whereof he was not bound to give Drumgrange the benefit of the ease; and if he was creditor to Drumgrange in the whole sum, then the adjudication against Gadgirth was conveyed to him only in security of that debt, since an adjudication within the legal is only a security, and therefore he could not be said to have got any ease of the adjudication on Gadgirth.—21st June 1738.

THE Lords found, that Captain Chalmers had the benefit of the eases even of Drumgrange's adjudication at least of the adjudication of his own estate, carried by them; and extended the rule of a modification, which they had laid down in other cases where the eases did not appear, to this case also. *Me et quibusdam aliis renitentibus.*—27th June 1738.

No. 15. 1737, Nov. 10. A. *against* B.

STRICHEN reported a question of an adjudication, Whether it was a good answer to the effect of a progress that there were inhibitions against the defender, though these inhibitions were after the pursuer's debts? The President, Royston, and Arniston thought the estate must be unencumbered, and the creditor is not obliged to dispute the validity of that encumbrance, or his preference to it, because the inhibition is not in the field. And upon the question, it carried to sustain the objection to the progress, *sed multi in contraria fuerunt opinione inter quos Ego.*

No. 16 1737, Nov. 17. CORSAN against MAXWELL.

THE Lords found the petitioner liable for repetition of the rents only from the date of the first interlocutor opening the legal of the adjudication, and restricting it to a security. —Adhered 17th November.—4th November 1737.

THE Lords found, that in so far as the personal debts in the defender's person can compete with the pursuer's debts, and adjudication thereon, the defender's super-intromissions ought to be imputed in extinction of it, reserving to the defender to make use of the same against the heir as accords; and refused the defender's counter-petition, praying that he might be allowed to redeem the pursuer's adjudication on payment of principal annualrents and expenses; for we thought that the inhibition secured the adjudication, as well as the debt in the bond.—26th January 1738.

No. 17. 1737, Dec. 23. KERR *against* BRIGHTON, (or CRIGHTON.)

THE Lords were very unwilling to determine the general point, Whether there can be a negative prescription of a right of property, without a positive prescription in another? But they thought that an adjudication against an apparent-heir of one who died about a century ago, whose propinquity is denied, is not sufficient to the Ordinary to take a proof of that propinquity.

No. 18. 1738, Feb. 14. ELIZABETH BALFOUR *against* WILKIESON.

UPON a division it carried to sustain the adjudication as a security for principal sum, annualrents, and necessary expenses, and annualrents thereof, from the date