of the adjudication;—and I do not much differ as to the principal sum and annualrents, for the want of the annualrents may justly enough be considered as a real damage, from which the adjudger's *bona fides* might save him; and annualrents are often given *nomine damni* of sums that by law do not bear annualrent, and are by act of sederunt due after horning and denunciation; and therefore it seems to be no stretch of the *nobile officium* to give them after adjudication, though erroneously led for more than was due, but led *bona fide;* but to make expenses a capital bearing interest 10 or 20 years before they are taxed, or can be known, which here is not yet done, I cannot so easily agree with.—Arniston, and several others, were against all accumulations, and for sustaining it for a security only of principal, annualrents, and necessary expenses.

No. 19. 1738, July (25) 27. AINSLIE *against* WATSON.

THE Lords adhered to the Ordinary's interlocutor, and found that the 40 years does not exclude the objections to the adjudications, which may be reconciled to the former decisions of the Court, as to the nullities appearing *ex facie* of the decreet; but I own I did not think it reconcileable with them as to the extrinsic proof.

No. 20. 1738, Dec. 1. RAMSAY *against* BROWNLIE.

THE point in dispute betwixt the parties, mentioned December 7th 1736, was for the first time determined this day, after a very full hearing in presence, when it was found unanimously, that an appriser dying within the legal, the right of apprising, (or adjudication) and whole sums therein contained, descended to his heir, and no part of it to his executor; for we considered it as a right of lands redeemable in a limited time, and not as a security for debt; and indeed the matter would be quite inextricable, were it otherwise, especially after the legal, because by no form hitherto devised, could the executor make a title to the lands; but if an apprising were, according to our late practice, restricted to a security, so as it would never expire, I doubt the case would be different, at least as to subsequent annualrents. 2*do*, After an apprising is expired, the appriser carries not only the property, but has also action for the bygone fruits during the legal against the tenants and all intromitters that cannot defend themselves by a better title or *bona fides*. *Query*, therefore, does not that action for bygone rents go to executors, and should he die within the legal, to whom will that action for bygones go? This does not want difficulty, for should it go to executors, these bygone rents may exceed the whole sums in the apprising, and many inconveniencies, or rather absurdities, might follow. It is strange that these questions have never been decided. Adhered unanimously 1st December.—2d February 1738.

No. 21. 1739, Jan. 9. YORK-BUILDINGS COMPANY'S CREDITORS *against* BILLERS.

THE Lords sustained several reasons of reduction of this odd trust-infeftment, particularly they found a disposition and precept of sasine in general, for all the Company's lands, was no warrant for infefting in any particular lands, and therefore found the in-

feftment null. *2dly*, They also found it reducible, as granted after an act for producing a progress in an adjudication at the pursuer's instance, but not because granted after raising inhibition, because in implement of a prior obligement. *3tio*, They found it null, as neither infefting in a particular annuity, nor in the lands for security of a certain sum, but indifinitely for L.100,000 sterling, or so much thereof as had been, or should be subscribed, (and what greatly moved me, though I believe not in the interlocutor) for payment of bonds not payable to particular subscribers, but going from hand to hand, like bank notes. *4to*, They adhered to their former interlocutor, finding that the certification did strike against these bonds (of which I greatly doubted.) *5to*, They found it void as to the L.27,000 subscribed for the Company. And *6to*, As to all bonds due to the stockholders.—*N. B.* Upon an appeal, the judgment was affirmed upon two or three of these reasons of reduction, I know not which, but as to the others (particularly the 4th) they found it unnecessary to determine, and therefore as to these reversed the interlocutors, without prejudice to any of the points when the same shall become necessary to be determined.—*Vide* Information for Duke of Norfolk, &c. against York-Buildings Company Annuitants, marked in November 1739, and 14th June 1739.

No. 22. 1739, July 25. CREDITORS of MR WILLIAM THOMSON.

THE Lords found, that Sir James Carmichael must take payment wholly out of the lands in Fife, and no part of it out of the houses in Edinburgh, in prejudice of Mr John Montgomery himself, notwithstanding of Mr John Montgomery's consent, which they thought could operate no benefit to the other creditors in Fife. The Lords laid great weight on the quality adjected to Mr John Montgomery's consent, that his debt should notwithstanding subsist only with a preferenee to Sir James Carmichael. I own I would have been of the same opinion without that clause. Arniston was at first against the interlocutor, but afterwards came into it, so that there was no vote. They also found that the creditors adjudgers should repay the first effectual adjudger his expenses of adjudication and infeftment, with annualrent.

No. 23. 1740, Jan. 29. HOME *against* CREDITORS of EYEMOUTH.

THE Lords gave all the points in this cause unanimously against Sir John, and I marked and kept the papers singly, on account of the question, where a superiority is adjudged, and the adjudger infeft, but not in possession, who is the proper superior after the legal for infefting the vassals? (a point I have stated in another place,) and the Lords were clear that the infeftment by the old superior was good.

(See Note by the Editor, *voce* SUPERIOR and VASSAL.)

No. 24. 1740, Feb. 13. DICKSON of Killbucho *against* DOOLY.

KILLBUCHO having upon a general charge obtained a decreet of constitution on a charge to enter heir, and upon a special charge adjudged an heritable bond, the question was, Whether this adjudication carried the annualrents *retro* from the predecessor's death? I thought not, because before 1672, the diligence behoved to have been by apprising, which could not reach bygones. However, all the rest found that the adjudication carried these bygones.