

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 DECRET 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 decret; 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 decret 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 decret 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 infestment upon it, and then there were many adjudications within year and day, whereon no infestment followed, and then an infestment 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 infestment? The Lords found, that Nethergremont's infestment of annualrent is preferable to all adjudications, whether prior or posterior, on which no infestment followed, notwithstanding that they were within year and day of the first effectual adjudications on which infestment 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: