possession, may notwithstanding use personal execution by horning, caption, &c. When this was first moved, Arniston, and several others, demurred, who thought that this would depend on the question, Whether apprisers before 1672 could, notwithstanding the possession, use such diligence, and therefore delayed for a memorial, which they got, but did not state the difficulty, and therefore I laid before them such decisions as I found in Durie, which were all, that a compriser in possession could not use personal execution without renouncing. However, the Lords thought the law was now different as to general adjudications, especially since the act 1672 had specially provided for the case of special adjudications, but without repeating the same provision as to general adjudications: The omission seemed to be *ex proposto*,—and therefore they directed me to pass the bill.

No. 28. 1740, Dec. 5. GEDD *against* BAKER.

AN adjudger having obtained charter and sasine, and entered to possession immediately after adjudication, and possessed more than 40 years. The Lords found that the adjudication could not be quarrelled upon nullities, though he had not possessed 40 years after the legal. But they thought he might declare the adjudication satisfied and paid within the legal any time within 40 years after expiring of the legal, though there was no occasion to give an interlocutor on this point. This interlocutor was unanimous except the Marquis of Tweddale, (Arniston absent.) 2*dly*, Found that minority must be discounted from the positive as well as negative prescription, (unanimous.)

No. 29. 1741, Feb. 20. YOUNGER CHILDREN of GUTHRIE, *Supplicants*.

UPON a bill of horning on an adjudication in implement proceeding on a decreet *cognitionis causa*, the question was, Whether horning could go without an abbreviate? I gave my opinion as Ordinary, that it could not, because no horning could proceed on comprisings, without being first registrate, and then by the act 1661 without being allowed instead of being registrate, and the act 1672, and the regulations 1696. But at the party's desire (who insisted, that such adjudications needed no abbreviate,) I reported,—and several Lords doubted whether any adjudger (though not in implement) can be forced to take an abbreviate, since the law does not declare adjudications without allowance or abbreviate void and null, but only that they cannot compete with subsequent adjudications,—though they all agreed that an abbreviate was as necessary here as in other adjudications; and the President seemed to be of that opinion; but upon noticing that this adjudication, with a charge, might perhaps be preferable to a subsequent voluntary right, which might make a great blank in our records, it carried to refuse the horning.—*Renitentibus* Drummore, Arniston, Kilkerran, &c.

No. 30. 1741, July 15. SPREULL *against* SPREULL CRAWFURD.

THE Lords found, that Milton could have no benefit by his own fraud, in taking the disposition from his nephew, which was in effect a conveyance of the reversion of his own adjudication, and that therefore the legal is still open. 2*do*, That the debts acquired by him were in trust for the behoof of his nephew, and that he must communicate the cases, and that this case falls not under the act 1696. As to this I gave no opinion, but wanted

to hear it debated betwixt the President and Arniston, the two lawyers who had argued it in the former process, in 1733, betwixt these parties. But Arniston was the first who gave his opinion, strong in express contradiction to the argument he had then maintained, (and indeed convinced me, as per my note a part in this case,) and the President agreeing with him, none of us opposed. 3*tio*, We found this point not determined by the former decreet, where the Inner-House interlocutor only found no sufficient evidence of the trust of the disposition, and the Ordinary only applied that interlocutor. 4*to*, We found that the pursuer was not barred by the transaction in 1717, when it was not known that his elder brother was dead, and therefore the ratification of Milton's adjudications could only be for all right the pursuer then had. 5*to*, That the 7000 merks paid Milton by that transaction, though not out of the common debtor's money, but for a conveyance of Blairgham, and houses in Glasgow, part of the subjects adjudged by Milton, must be imputed towards satisfaction of the debts due to him, agreeably to the decision 14th January 1669, M'Kenzie against Ross, (DICT. No. 10, p. 299.)

No. 31. 1741, July 23. EARL of ABERDEEN *against* SCOTT'S CREDITORS.

REMIT to the Ordinary to hear on the petition and answers, and report, 1st June. This was on a suggestion of Arniston, very new, that the payment recovered on the ranking and preference, should be applied not to the annualrents of the accumulate sum, but to the accumulate sum itself. But upon the report, the Lords made no difficulty, nor was there so much as an argument on this new point of Arniston's; and we found, as prayed in the petition, that the payment on the forthcoming must be applied to the annualrents of the principal sum after the adjudication (whereby we allowed the creditor the application to the annualrents last growing due, and not to those first growing due, to save his adjudication entire.) 2*dly*, That the money recovered on the ranking must be applied first to the annualrent, next to the accumulate sum, without restricting the penalty.—27th February, 1741.

No. 32. 1741, Nov. 17. CREDITORS of STEUART, *Competing*.

THE question was, Whether a charge to a superior to enter an adjudger without offer of a year's rent and a charter (which alone is sufficient to exclude the superior's casualties, according to the decision 9th February 1669, Black and French) * if such an offer was necessary,—and consequently that a subsequent adjudger infeft ought to be deemed the first effectual adjudication? And the Lords adhered to the Ordinary's interlocutor, finding the offer of a year's rent and charter not necessary to give the adjudication the benefit of being the first effectual one; and also adhered to the second branch, finding the posterior adjudger not entitled to the expenses of his infeftment. President against both. Arniston was doubtful of the first, but voted and was clear as to the last.

No. 33. 1742, Feb. 27. GILBERT STEUART *against* MR DAVID COUPAR

THE Lords found, that Mr Steuart, adjudger, having charged Mr Coupar to infeft him in an annualrent, Mr Coupar could not claim a year's rent,—and adhered to the

* DICT. No. 30. p. 6911.