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

I had found an adjudication on a decreet *cognitionis causa* null, for that it was pronounced before the decreet *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 decreet *cognitionis causa* against the heir of Mr Robert Richardson, of an heritable bond by the Viscount of Stormont in 1662 to Mr John Carmichael, and conveyed to Richardson, obliging the Viscount to infeft the creditor in an annualrent effeiring 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 decreet *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 6*to 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 6*to 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 6*to 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

only be preferred *pari passu*, and agreed that a contrary law would make a terrible convulsion in our land rights. If a suit was once commenced for the Crown, an adjudication following at 20 years distance might be preferred to adjudications completed many years before. Kames put a pretty singular construction on the act *6to Annæ*, that though it gave a privilege to the Crown's causes in the Court of Exchequer, such as they had in the Court of Session with respect to being called, yet that in competition with other creditors it gave them no preference, not even on goods and chattels. But what surprised me most was, that Lord Kilkerran told me, after that decision, that he asked Mr Craigie, who was at the Bar, but not in the cause, if he had any doubt? (both of them having been King's Advocates,) and that he said he always doubted, whether the King's debts had not a preference on lands, even by the law of Scotland. *Vide* 18th July 1754, when this interlocutor was adhered to. (See Note of No. 1. *voce* KING.)

ADULTERY.

No. 1. 1744, Jan. 20. STEEDMAN *against* COWPER.

THE question was, Whether an action of damages lies by the law of Scotland for adultery against the adulterer, and whether that civil action can proceed before a criminal prosecution? We had no difficulty as to the first; but as to the second we differed. Royston and some others thought it not competent till conviction, but it carried by a great majority, that it is competent before us in the first instance; of which opinion I was, as was the President—17th June 1743.—Adhered, 29th June, and refused a bill without answers.

UPON advising the proof in this action of damages, the defenders disputed, that the defender's adultery with the pursuer's wife was not proved. But their chief defences were, That they had proved her guilty with three other men before Couper came acquainted with her; *2dly*, That from the proof, there was reason to believe that the pursuer's wife rather seduced the defender than he her. In giving our opinions, Arniston thought, that by the law of Scotland, action did not lie, as did Kilkerran; but that point was settled by our interlocutor of 17th and 29th June last. First we found the libel proved without a vote,—next we found no sufficient defence, and found the defender liable in the expenses of the former process of divorce and appeal, and of this process,—to give in an account of his damage through loss of business,—and remitted to the Ordinary to tax the same.—20th January.

ADVOCATE.

No. 1. 1743, Nov. 25. GARDEN of Troup *against* MR RIGG.

THE Lords found, that indefinite receipts of money in part payment of what the payer owed were no interruption of prescription of any particular debt, and likewise that a general submission of all claggs and claims, without proving that that particular debt was claimed, or where the submission was totally cancelled, was no interruption,—and that a trustee who uplifted his employer's money and applied it to his own use, but acquainted his employer of his having done so, was not liable for annualrent. Lastly, That Mr Rigg