No 42. recording before it; but was by decisions in 1664, and since, found to be no nullity; though the LORDS were very sensible, that this was a defect in the act, and might prove very inconvenient where one neglected to record their adjudications for many years, and afterwards claimed a share of the mails and duties from the first adjudger, or the buyer, *alleging*, That being within year and day, they came in *pari passu*; and that here Oliphant, the donatar, had acquired in the first adjudication, and was *in bona fide* to think there was no other when he found it not recorded. But *bona fides* takes only effect *passive* in payment, but not in purchasing; because it is a voluntary act, *et caveat emptor*.

Fol. Dic. v. 2. *p.* 332. *Fountainhall, v.* 1. *p.* 539.

1695. *February* 12.

AGNES HAY, and WALLACE her Husband, *against* BIRDY of Aslick.

No 43. Found in conformity to Brown against Porterfield, *supra*.

THE preferable appriser objects against Aslick, that his adjudication is not *allowed*, and so cannot come in *pari passu* with him. *Answered*, A posterior adjudger first *allowed* might object this, and seek preference; but you who have the first effectual apprising or adjudication cannot; because, by the 62d act, Parl. 1661, I am made a part of your right, as if we were all in one. THE LORDS found this objection not competent to him.

Fol. Dic. v. 2. *p.* 332. *Fountainhall, v.* 1. *p.* 668.

1698. *February* 17.

NICOLSON of Balcaskie and the REPRESENTATIVES of HAMILTON of Bancrieff *against* The other CREDITORS of HAY of Park.

No 44. Found in conformity to Brown against Porterfield, *supra*.

HALCRAIG reporsed Nicolson of Balcaskie and the Representatives of Hamilton of Bancrieff against the other Creditors of Hay of Park. It was an objection against an apprising as null, because, by the 31st act of Parliament 1661, allowance is necessarily required, and this was not allowed. *Answered*, The want of allowance is not by the act made to infer a nullity, but the certification is, that those allowed before it shall be preferred; and by a subsequent act of the same Parliament, viz. act 62d, all apprisings within year and day are brought in *pari passu*, without requiring whether they be allowed or not; and the LORDS, ever since that act, have brought them in *pari passu* without regard to their allowance, as was found, 17th July 1668, Stewart *contra* Murray, No 80. p. 8384.; 29th November 1672, Maxton *contra* Cuningham, No 29. p. 13551.; and November 1694, Brodie of Aslisk *contra* Wallace, See APPENDIX. *Replied*, The act of debtor and creditor bringing in all apprisings within year and day to be *pari passu*, does not dispense with the omission of the al-

lowance; and if this preparative be laid down, it may be of dangerous consequence to purchasers, for there may be a latent expired apprising, and if valid without allowance, where shall he find it, or come to the knowledge of it? But the LORDS would not recede from the current of the decisions, and therefore brought it in *pari passu* with the rest, though it was not allowed to this day, much less within the sixty days after its leading. No 44.

Fol. Dic. v. 2. *p.* 332. *Fountainhall, v.* 1. *p.* 825.

1699. *July* 4. Mr WILLIAM COCHRAN, Petitioner.

No 45.
How a sasine amissing is to be supplied.

MR WILLIAM COCHRAN of Kilmaronock, by petition, represents to the Lords, that he being heir to his brother Polkelly, his sasine is amissing, but the notary being on life has given a new extract of it out of his protocol book; but Sir John Fowlis, Keeper of the Register of Sasines, scruples to mark it of the old date, without the Lords' warrant. THE LORDS having appointed one of their number to compare the protocol book, with the extract now craved to be marked, it appeared to be but a minute, wanting the clauses of stile which the notary had now inserted and engrossed; and there being preferable rights on the land, who were concerned this sasine should not be made up, (though they declined formally to appear), the LORDS first considered, whether this could be done summarily *per modum quærelæ* on a bill, or if it required a process; and if the last, then 2*do*, Whether it behoved to be done by a proving of the tenor, or a summons of extention, calling the notary and others? There was one instance where the like had been granted on a bill to Sir Andrew Ramsay, 2d January 1678, No 32. p. 13553.; but the LORDS doubted they could allow it any otherways *hoc ordine* but in the precise terms as it stood in the notary's protocol, and even then *periculo petentis*, and reserving the right of third parties, and that Sir John Fowlis behoved to narrate his warrant; and therefore superseded to give answer unless they would take it on their peril.

Fol. Dic. v. 2. *p.* 333. *Fountainhall, v.* 2. *p.* 56.

1700. *July* 3.
Competition Mr JAMES HAY and the other CREDITORS of Hay of Monkton.

No 46.
Found in conformity to Brown against Porterfield, *supra*.

THE LORDS advised the competition betwixt Mr James Hay and the other Creditors of Hay of Monkton. They *objected* against his adjudication, That not being allowed, they were preferable by the 31st act of Parliament 1661. *Answered*, He was within year and day of the first effectual comprising; and, by the 62d act of the same Parliament, all such are brought in *pari passu* without noticing their allowance; and in many cases the Lords had so determined, 17th