1671. *February* 25. Anent the TRANSFERRING of APPRISINGS.

WHERE a man's name is borrowed to the leading of an apprising, the ordinary way is, that he grants a back-bond to the person for whose behoof it is, obliging him to dispone the apprising when it shall be led to him, with all that has followed or may follow thereupon. Though this be the common style, yet it proves oft inconvenient; for if the party entrusted die before he dispone, or the person for whose use it is, the back-bond must be tranferred either in the heir active or against the heir passive; and if the person intrusted his heir renounce, or let a decreet go against him as lawfully charged, then he must comprise or adjudge of new again; yea the trustee's creditors will come *in pari passu*, (they doing diligence,) as to the very lands to which he had but right in trust. And therefore it's only fit to take a formal disposition *per verba de presenti* to the comprising to be led at his instance and all that may follow thereupon, with an obligement to renew if required. (*Vide infra, February* 1676, *No.* 464; *item*, 1*st December*, 1671, *No.* 275; *item in November*, 1677, *No.* 647, § 2.) Neither will any object to me that a nonens cannot be assigned nor disponed; but such is a comprising not yet led; for they may as well say that a man cannot sell nor dispone a liferent, seeing it has no being but for the year current, and the subsequent years are not due unless the liferenter outlive the legal terms of the same; and yet there is nothing more ordinary than disponing of liferent rights. Neither does that clause, whereby I take him obliged to renew it if need be, prejudge, because a man who has a general assignation to a number of debts due to his cedent has right good enough to them by that general assignation, and yet he may take a special assignation to every one of them apart.

Advocates' MS. No. 154, *folio* 93.

1671. *February* 25. Anent The REGISTRATION of SEASINES.

JAMES STEWART alleging that though by act of Parliament 1617, seasines must be registrate within sixty days after they are given, yet the intention of it was no other but that it might be registrate thereafter, and that such a seasine would stand good against any other right posterior to the date of its registration, though the sixty days were not precisely kept. Sir G. Lockhart represented the vanity of this, seeing the lawgiver by prefixing that space of sixty days, hath had an eye and special regard to the convenience of the lieges, that they might not be put to an irrational and uncertain inquiry after incumbrances upon men's lands, anent which they intend a bargain; so that when I have suspicion of any infeftment given about such a time, I have no more to do but to look by the space of sixty days after its date, and if I find it not within that time, then the law makes me secure in so far as I need to take no notice of it. Whence ariseth another question, whether a seasine though not registrate, will be valid to debar me who acquire a posterior right in these lands, if I know of your right before I purchased my own? It seems that it should be good enough against me, seeing the law has

got its intent, I knowing of it, for it designs no other thing by appointing registration, but that it become public and come to men's notice; yet this private knowledge puts no man *in mala fide* to take a right to these lands; for though I know ye have a seasine, so it is as true I know it yet to be null and imperfect till it be registrate: just like an assignation to a debt, I know ye have one, but it is not intimate, that will never hinder me, nor put me in *mala fide* to take an assignation to the same debt; and if my assignation be first intimate, I will be preferred to you; *item*, though the debtor know his bond is assigned, yet he may pay to the cedent without respect to the assignation, at any time before it be legally intimate: Dury 15 *June*, 1624, *Adamsone*, yet see *ult. Martii* 1624, *L. Dunypace and Sands*: for *id tantum scimus quod de jure scimus.*

Advocates' MS. No. 155, *folio* 93.

1671. *February* 25. HELEN HAMILTON *against* WM. BELL and OTHERS.

THIS is the relict of James Bell the merchant, who as donatrix to her husband's escheat, pursues a special declarator against several alleged debtors to the said James the rebel; and amongst others William Bell his brother being called, and all being referred to his oath, I alleged I would take no day for producing him, because I offered me to prove, that after a fitted account betwixt this pursuer's husband and the defender, the defender was so far from being debtor to him in any sums of money, that to the contrary he acknowledges himself to be debtor to William, now defender, in L.36 Sterling; and lest they say that William might be debtor to the rebel for causes after that, it is answered, that cannot be, because this fitted account is subscribed on the day immediately before James died. *Vide infra, No.* 711, *Deans* and *Purves* [18*th January* 1678.]

To this it was ANSWERED,—That this fitted account being subscribed by the rebel long after his denunciation to the horn, there being *jus quæsitum Domino Regi superiori, ejusque fisco per rebellionem*, he could then do no deed to the prejudice of the king's fisk or his donatar. Yea, in the case of *Glover and George Bayne*, the Lords found a rebel after he was registrate at the horn, could not assign a debt owing to him, in satisfaction of a debt owing by him to one of his creditors. Replied,—That this account being before the gift or general declarator, it were a hard matter to find that he could not therein declare he was addebted to his brother in L.36, upon the casting up of all accounts betwixt them. I confess, deeds after the gift or declarator by the rebel, may be upon very plausible grounds called in question; but to quarrel all his actings from the time of the denunciation, seems very hard and of dangerous consequence. Yet my Lord Advocate inclined to find that he could not fit an account after he was lying at the horn. *Infra No.* 422, and 479.

Advocates' MS. No. 156, *folio* 93.