

REGISTRATION.

13559

equivalent to a reduction, since the father cannot be considered to have died *vestitus*, a null sasine being no sasine.

No 39.

THE LORDS delayed to give answer to the point, If the not booking imported a nullity of the sasine ; but found the suspender to fall under the exception of successors, as being an apparent heir, who had no disposition and infeftment from his father.

Harcarse, (INFEFTMENT.) No 603. p. 167.

1687. *June.*

The Lord SOUTHESK, Supplicant.

No 40.

THE LORDS allowed a principal bond that had been registered against the Lord Annandale after he was dead, to be got out of the register upon the delivering back the extract. Here it was not known if the bond was booked.

Harcarse, (REGISTRATION.) No 834. p. 239.

1688. *February.*

A. *against* B.

No 41.

A SASINE taken in Zetland being sent in a ship to be registered in the general register at Edinburgh, and the ship being driven to Norway by stress of weather, so as the sixty days were elapsed before she arrived at Leith ; application was made to the Lords for an order to mark and book the sasine within sixty days of the date.

THE LORDS ordained the sasine to be taken in, and marked of the date of the ingiving, seeing it might be preferable to infeftments posterior to the registration.

Harcarse, (REGISTRATION.) No 835. p. 239.

1692. *December 27.*

BROWN *against* PORTERFIELD of Comiston and OLIPHANT.

THE LORDS had found the Commissaries had committed no iniquity in sustaining Brown's adjudication ; for they found it was before the out-running of the year and day of the liferent-escheat, and so would be preferable to the donatar ; and that it needed no infeftment to give it preference, because it was within year and day of the first adjudication whereon infeftment had followed ; and so it came in *pari passu* with it, and had a share by communication of its infeftment ; and that their neglecting to allow and record it for the space of nine or ten years did not debar it of the foresaid privilege ; because the not recording, by the act 1661, did only give it a posteriority to others adjudging after it, but

No 42.

Effect of registration on the *pari passu* preference of adjudication.

The want of allowance is no nullity.

No 42. recording before it ; but was by decisions in 1664, and since, found to be 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 Bancriff *against* The other CREDITORS of HAY of Park.

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

HALCRAIC reporsed Nicolson of Balcaskie and the Representatives of Hamilton of Bancriff 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-