

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* Cuninghame, 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-