

1671. *January 28.* Anent *pari passu* preference of APPRISINGS.

IT went to interlocutor, whether or no the third compriser, who has comprised within year and day of the second, but not of the first effectual comprising, will come in *pari passu* with the second as the second comes in *pari passu* with the first, conform to the act of Parliament? Though there may seem the same parity of reason, yet I think he will not. It may also be questioned from what time the year begins to run, whether from the date of the decret of apprising, or of the infestment rather, since it can scarce be called an effectual comprising till then; and so if a man shall have the benefit of the act of Parliament, who comprises within year and day from the date of the seasine, or if it must be from the date of the decret, or of the allowance, as is found in a like case, *11th November, 1630, Laird of Limpitlaw.* Item, it seems that if the denunciation of the second appriser be within year and day, it will be sufficient though the rest of it be without the year; for in *favorabilibus* (such as is the case of creditors contending *damno vitando*) *actio incepta habetur pro completa, et initium est spectandum.* Vide *infra, No. 196.*

*Advocates' MS. No. 116, folio 87.*

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1671. *January 31.* WHYTHEAD *against* THOMAS LIDDERDAILL.

IT was alleged that he could not answer till he was of new summoned, because any citation given against him was upon sixty days at the pier and shore of Leith, &c. as use is, against one that is out of the country; whereas he neither at that time, nor ever since, nor before, was he out of the country. ANSWERED, Let it be so, a citation as if he had been out of the country is more than a citation at one's dwelling house, and at least it must be repute equivalent to the same. *Quæ superabundant non nocent. In majori continetur et minus.*

My Lord Gosford would not sustain the citation, but found he must be summoned of new. The cause of this mistake was, that this defender had a brother who was truly out of the country, and who was also called in the process, and they thought it one work to cite both on the sixty days. See a case somewhat parallel, 4th June, 1631, *Chrystie against Jack.*

*Advocates' MS. No. 117, folio 87.*

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1671. *January 31.* TAILFER *against* ———.

THIS was a suspension upon the reason of payment verified by a discharge produced, which bore only the receipt of L.40 in part of a greater due to the giver of the discharge. ALLEGED, The discharge did not meet this charge, and was not a discharge of any part of the sum contained in the bond charged on, though it be posterior to it, but of a decret recovered by the charger against the sus-