appriseth the same lands from Robert Schaw: and, in competition betwixt Tullos and him for the maills and duties of the lands, it was alleged by Tullos, That he ought to be preferred; because Mitchel's apprising is null, as being deduced after the late Act of Parliament anent adjudications, discharging all apprisings thereafter; and, albeit there be an exception where lands were already apprised, and the legal not expired, yet that can only be understood of apprisings deduced against the same common debtor, or his heirs, being entered or charged: And, albeit there be here an expired apprising of the lands of Lethingie, led by Robert Schaw against Michael Schaw, whereby an apprising, after the said Act, against Michael, or against Robert, as heir to Michael, would be valid,—yet John Mitchel's apprising is only against Robert, *proprio nomine*, for Robert's own debt. It was answered, That the exception in the Act of Parliament is general; and that the reason of the exception must be, because, where apprisings are led, there cannot be an adjudication of a parcel of the land; the whole being affected by the apprising, and the right of reversion only remaining, which is not divisible; and that this, at least, being dubious, John Mitchel was *in bona fide* so to proceed, and should not lose his legal diligence; which can only give him the reversion, upon payment of 5000 merks, which he is willing to pay, in so far as Jean Schaw, who was fiar of the right, was not satisfied by her intromission with the rents of the lands, either after the right or before the same. It was replied, That Jean's intromission, before the right, cannot satisfy the same, it being only extrinsic, and no liquid compensation; nor can it be instantly verified, Jean being dead. The Lords sustained Mitchel's apprising, that he might have the benefit to purge Tullos's right, in so far as he was not satisfied, by intromission, by virtue of the right; but would not sustain prior intromission, not liquidated.

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1674. *November* 26. CAPTAIN WISHART *against* The BISHOP of EDINBURGH.

THE Bishop of Edinburgh, Wishart, having died about Lammas 1671, his son pursues the present bishop for the quots of all testaments that were, or might have been confirmed, before his father's death, or within half a year after, by virtue of the ann. It was alleged for the defender, That the quots, being due for confirmation, could only be due to those that did confirm; and that they are no part of the yearly rent of the bishop, having a legal term; but are a part of the casuality due only for, and when confirmations of testaments are granted; in the same way as the duplications of feu-duties of vassals, or compositions for entering singular successors; so that the late bishop could have no right but as to what he actually confirmed, and so can have no ann of confirmations made after his death: as, if a commissary-clerk or fiscal had died after the bishop, but within the time of his annat, the bishop's executor could not pretend to the compositions granted by such officers. *2do.* There was no ann due to bishops before the late Act of Parliament *in anno* 1672, at which time Bishop Wishart was dead. It was answered, That the quots are the most considerable part of the bishop's revenue, and might have been set in tack, for a yearly duty, at the ordinary terms; and that the anns were due by an act of the bishops, upon a

commission granted by King James, produced in process; and that the said Act of Parliament did only alter the endurance of the ann,—that it could extend no further than a term's revenue after the incumbent's death; whereas, before, it might have reached a whole year, because, by the canon law, *annus inceptus habetur pro completo*. The Lords found, That the bishop had an ann, by virtue of King James's Act; but found he had no right to the quots of testaments but such as were actually confirmed or decerned; but did not determine whether those actually confirmed after his death, within the ann, would belong to him.

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1674. *December* 5. CHARLES OLIPHANT *against* CURRIE.

CHARLES Oliphant, being infeft in some lands, by an apprising, pursues Provost Currie, and others, for maills and duties; who alleged, No process; because the second summons is only on three days, which should have been on six. It was answered, That, by the constant consuetude, all parties may be cited, being found within Edinburgh or the suburbs, on twenty-four hours; in which there was a late decision, produced at the instance of Sir James Cockburn against Lumsdane, who was cited in the Cannongate. It was replied, That the Lords, by their late Act of Sederunt, had declared the continuation of the diets of summons, without any exception of this privilege. The Lords, considering that there hath been such a custom even extended to those that were occasionally in Edinburgh, ordained an addition to be made to the Act of Sederunt, excepting citations within Edinburgh, and the contiguous suburbs; but only against the inhabitants there; for, as to strangers, who are not presumed to have their writs, or other probation, with them, they thought it just that the *legales induciæ*, competent by law, should be free for them.

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1675. *January* 18. The COLLECTOR of the KING and LORDS' TAXATION *against* THOMAS ENGLISH.

THOMAS English, younger of Straitoun, being apprehended, by caption, for payment of the rests of the taxations 1633; Thomas English, elder, his father, grants bond either to pay these taxations or to produce discharges, or otherwise the person of the said Thomas English, younger, betwixt and such a certain day. Being charged thereupon, he suspends, on this reason, That his bond is alternative, and thereby he hath his election, and is willing to produce his son, which is the third member of the alternative. The charger answered, That common rule in all alternatives, *electio est debitoris*, hath these limitations; 1*mo*. if there be not *mora*; but here the suspender's offer to produce his son is *post moram*, there being a determinate term and time appointed by the bond to produce him, which is long since past. 2*do*. Producing of the son is not receivable, *nisi rebus integris*, although it were at the term; but now the son is denuded of his estate, and doth pretend that he is free by his Majesty's proclamation re-