

telling the special way how it vaked, and by whose death ; or a gift of recognition, and not express the specific deed by which that delinquency or casualty was incurred ; or a presentation to a kirk, or a gift of an office, without telling *verum modum vacationis* ; or a general wadset of lands ; and another shall afterwards take a second gift of escheat, ward, non-entry, marriage, recognition ; or a second presentation or gift of a place ; or a special hypothec ; and they bear the particular deed, *et verum modum vacationis* : in a competition, the second would be fair to be preferred to the first. See *Act 23d, Parliament 1567* ; *Codex Fabrianus tit. de Sacrosanctis Ecclesiis, definit. 1, 4, et 82. Speciale pignus magis afficit rem quam generale*, says Gothofred in *notis ad leg. penult. D. In quibus causis pignus vel hypotheca remittitur* : which is applicable to the hail foresaid causes ; as also to two comprisings or two assignations, that the special is preferable to the general. *Vide infra, February, 1677, No. 550, § 3, Arbuthnot.* See Durie, *20th Nov. 1628, Watson and Stewart.* *Advocates' MS. No. 238, folio 109.*

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1671. November 7.

ANENT APPRISING.

WHEN that imaginary ceremony of searching for moveables upon the ground of the lands, before the messenger can legally proceed to denounce them to be appraised, is used, an offer of cows or other cattle, to the value of the sum, will not impede the denunciation or apprising, nor the proving of the said offer will not be a ground whereon the comprising can be thereafter branled, as has been often decided ; and that for three reasons ; 1<sup>mo</sup>, It is *aliud pro alio quam solutionem debitori facere non licet creditore invito.* 2<sup>do</sup>, An offer of payment to the messenger *non relevat*, because he has no power to receive it, and therefore it should be made to the party. 3<sup>tio</sup>, They should take their beasts themselves, dispose upon them, make penny of them, and so satisfy their credit. Yea in Cromartie's case, in 1664, the Lords found an offer of silver plate to the value of the sum owing, was not relevant to impede a comprising of lands, because it was not *argentum signatum* ; and it is species and illiquid, and so cannot compensate or pay. This agrees with *lex Quintus Mutius, 27. D. de Auro argento et mundo legatis.* *Advocates' MS. No. 239, folio 109.*

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1671. November 8.

SIR JOHN WILKY of Foulden *against* SIR JAMES CARMICHELL and OTHERS.

SIR JOHN WILKY of Foulden, pursues a declarator against Sir James Carmichell, Mr. Wm. Cheisley, William Brown, agent to the boroughs, and others, to hear and see it found and declared, That a bond granted by the said Sir John, as principal, and Sir James Carmichell, as cautioner, was void, null, and extinct, in so far as the same was satisfied and paid with the principal's own monies ; and consequently, that the assignation taken by the said Sir James, in Mr. Wm. Cheisley's