No 61. That the comprising is not redeemable from the defender, seeing it was not redeemed within ten years after he acquired a right thereto conform to the act of Parliament. *Duplied*, That the ten years cannot be computed from the date of the disposition whereby he acquired the said apprising, but from the date of his infeftment following thereupon, or that he had done some other deed, such as the intenting action for mails and duties, or the like, by which it had been made public that the defender had acquired the right. For otherways the apparent heir might acquire a right to an expired apprising, and continue his predecessor's possession and keep the right latent, so that it should not be known to other creditors before the ten years were elapsed, which would absolutely elide the design of the act of Parliament, which was introduced for obviating the fraudulent practices of apparent heirs in acquiring such rights to their predecessors' estates. THE LORDS found that these words in the act, bearing apprisings acquired by apparent heirs to be redeemable within ten years after the apparent heir's acquiring of the right, are to be understood of a complete acquisition, either by infeftment where the nature of the right required the same, or by some diligence done by the apparent heir, whereby his acquisition of the right might be made known to the creditors, where either the nature of the right did not require infeftment, or the comprising or adjudication was not perfected by infeftment. The pursuer insisted likeways against the defender as intromitter with the rents of the lands of Coldinghame which were not contained in the apprising. *Answered*, That his father was never infeft in these lands, and he has right thereto as heir served to his goodsire. *Replied*, That the father being at least apparent heir in an heritable right, and having died in possession of the lands, the defender having entered and continued in his father's possession of the same for several years before his service as heir to his goodsire, it is sufficient to infer that passive title of behaviour as heir against him. THE LORDS found, that the defender continuing in the possession of the lands whereof the father died in possession, being not infeft therein, does not infer a passive title against the defender.

THE LORDS, in this process, found likewise, that the benefit to redeem a right of an expired apprising acquired by an apparent heir was not only competent to posterior comprisers, but also to a personal creditor, albeit the act of Parliament mentions only posterior apprisers.

Sir P. Home, MS. v. 1. No 526.

No 62. 1685. *January.* SINCLAIR of Southstone *against* SINCLAIR of Stanestone.

Found in conformity with Burnet against Naysmith, No 48. p. 5302.

AN apparent heir, who acquired an apprising in his father's lifetime, being pursued upon the act of Parliament, in a declarator of redemption within ten years after it came in his person, it was *alleged* for the defender, 1*mo*, The ap-

prising could not be redeemed till after his father's death. *2do*, The right of apprising being acquired *ex dono*, it fell not under the act of Parliament; both which allegeances the Lords repelled.

No 62. that an apprising purchased by an apparent heir during his father's life was redeemable by creditors.

It was further *alleged* against the apprising, That it did not extend to some lands, being restricted by Mr William Dundas Advocate, who stood in the right of the apprising, before it came in the apparent heir's person.

Answered; That such a restriction being only personal, it cannot prejudge a singular successor in the real right.

'THE LORDS found, that if infeftment had followed upon the apprising, before restriction, the restriction was but personal; but if it preceded infeftment, it did affect and regulate the apprising against the singular successor; because, till infeftment, the apprising was transmissible by assignation.' It was controverted among the Lords, if a charge against the superior, or the expiring of the apprising before restriction, had the same effect as an infeftment, seeing these could not be a title of removing. *See* PERSONAL and REAL.

Fol. Dic. v. 1. *p.* 359. *Harcarse*, (COMPRISINGS.) *No* 310. *p.* 76.

1685. *February* 26. CAMPBELL *aganst* CAMPBELL.

No 63. Altho' the act of Parliament mentions only expired apprisings, yet those acquired by an heir apparent within the legal were redeemable.

THE LORDS decided the point between Campbell of Silvercraig and Sir Duncan Campbell of Auchinbreck, viz. whether or not an apparent heir buying in a comprising within the legal, before it is expired, can be obliged, on the 62d act of Parliament 1661, to take the money he gave for it. It was *alleged*, The act took only place in the case where the comprising bought in was expired, because, if it was current, the other creditors had an ordinary remedy extant, viz. to redeem within the legal; and that act 62d being correctory, is an extraordinary remedy, *et strictissime* to be interpreted; *non enim est recurrendum ad extraordinarium remedium, quamdiu extat ordinarium.* Yet the LORDS, for securing creditors, justly found it all one case, whether the apparent heir bought it within the legal or after. Which point was not formerly decided.

Fol. Dic. v. 1. *p.* 359. *Fountainhall, v.* 1. *p.* 344.

1686. *March.*

BAILLIE of Torwoodhead *against* The REPRESENTATIVE of EDWARD RUTHVEN, and HUGH WALLACE Cash-keeper.

No 64. An apprising of a defunct's estate, purchased in by the heir of

IN a declarator at the instance of William Baillie of Torwoodhead, nephew and heir of tailzie to James Lord Forrester, against Mr Ruthven his son and