

THE LORDS find, "That the petitioners, the executors and next of kin confirmed to Daniel Spalding, the apparent heir, have right to the interests of the reversion of the price that fell due, and were not uplifted during his life."

No 20.

Ordinary, *Lord Ankerville.*For George Spalding, *Solicitor-General, Mat. Ross.*For Rebecca Spalding, *Rolland.*Clerk, *Menzies.*

C.

Fol. Dic. v. 3. p. 258. Fac. Col. No 218. p. 457.

S E C T. IV.

Effect of the Apparent Heir's interference, and extent of his Interest in the Estate.

1674. February 24.

CHALMERS against FARQUHARSON.

JAMES CHALMERS, advocate, pursues Farquharson of Inververay for payment of 600 merks, wherein he was cautioner, and distressed for his father, and insists upon this passive title, that the defender had taken right to an apprising led against his father, of lands whereof he was apparent heir, and that within the legal. It was answered, That this was no relevant condescendence; for there was nothing to impede an apparent heir more than any other, to take right to any apprising against his predecessor, within or after the legal; for thereby he was only singular successor; and albeit by the late act of Parliament, all apprisings acquired by apparent heirs are redeemable from them by creditors, for the sums they truly paid, yet that cannot be done in this but in a separate process.

THE LORDS found that the apparent heir's taking right to an apprising within the legal, and possessing the lands appraised, did not infer the passive title; but allowed the pursuer in this process to purge the apprising, by payment of the sums truly paid out by the apparent heir; but found him not liable personally for the value of the lands above these sums, as being thereby *lucratus*, in respect of the tenor of the statute, bearing only the apprising to be redeemable.

Stair, v. 2. p. 268.

No 21.
Found that the apparent heir's taking right to an apprising within the legal, and possessing the lands appraised, did not infer a passive title.

1682. February 2.

GORDON against FRENDRAGHT.

IN an action of declarator, pursued by Adam Gordon, as creditor to the deceased Viscount of Frendraught, this Viscount's grandfather, against this Vis-

VOL. XIII.

29 R

No 22.
An apprising acquired for the behoof of