

deem the lands at any time within his minority, yet the compriser has right to the duties of the lands in the comprising of all the years subsequent to the first seven years, and intervening before the redemption; and the offer and consignment of the annualrent satisfies not; and the other *replying*, That the act provides, and can have no other interpretation, but that minors may redeem at any time within their minority in that same manner as majors may redeem within the time allowed to them in law, viz. within seven years, within which time they are not holden to pay to majors any more but the annualrent; and although the act of Parliament appoints the mails and duties of the lands comprised from minors, of the years subsequent to the first seven years, and intervening to the years of majority, to pertain to the compriser, yet that is only statute and appointed in case minors redeem not in no year before their age of 21 years, and is set down for a penalty in case of failzie, and ceasing to redeem during all the years of minority, to the which case the words of the act are expressly limited, and cannot thole any other interpretation; likeas, it were iniquity to prejudice minors of their benefit which they have by that act, except where the failzie falls, as it does not in this case. THE LORDS found, that by this act of Parliament there is no further benefit granted to minors more than they had before the making of that act, except only for the time of redemption, which is declared by that act not to run against them during the time of their minority, but that they may redeem lands comprised at any time within the years of 25 years; but, found, if they redeem not while the seven years be outrun (albeit they redeem thereafter, and within the age of 21), that the duties of the lands for the years after the seven years, and before the time of the redemption, should pertain to the compriser, and that the minor satisfied not the tenor and mind of the act by paying of the principal and annualrents; and so found the duties of the lands of the intervening years to pertain to the compriser and not to the minor, albeit he redeemed far within the years of 21 years; and found that the act ought to be so interpreted.

Act. *Advocatus et* ———.Alt. *Nicolson et Craig.*Clerk, *Gibson.**Durie, p. 876.*

1677. December 4.

OLIPHANT *against* HAMILTON.

THERE being several apprisings deduced against Anthonia Brown, as lawfully charged to enter heir to Sir John Brown of Fairnie her father, in the lands of Fordell and Rossie, &c.; whereunto William Hamilton of Wishaw hath now right; there was another posterior apprising of the said lands deduced against the said Anthonia, at the instance of unquhile John Oliphant, whereupon John Oliphant his son and heir hath used an order of redemption of the former apprisings, and thereupon pursues declarator of redemption. It was *alleged* for

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A minor succeeding to the legal reversion of an apprising by a posterior apprising, has not only the privilege of redemption in the right of

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his predeces-  
sor if he was  
minor, but of  
his own mino-  
rity, during  
which the le-  
gal reversion  
runs not  
against him.

Wishaw, absolvitor, because before this order used, the legals of his apprisings were expired, and they became irredeemable, in so far as they being led against Anthonia Brown a minor, continued redeemable till their age of 25 years complete, by the act of Parliament 1621, who was 25 years complete before the using of John Oliphant's order. It was *answered*, That the declarator is well founded upon the act 1621, which doth most justly give the privilege to all minors who have right to redeem apprisings, that the legal runs not against them during their minority. It was *replied* for the defender, That he opposes the act of Parliament, which being a correctory law, is not to be extended *de casu in casum*, but is *strictissimi juris*; for apprising being a legal execution apprising lands for sums, according to the custom of all nations, it should have its full effect without reversion, as well in lands as moveables; but it is a special favour induced by our law, by the statute of King James III. anent apprisings, That they were made redeemable within seven years, and now within ten years; but there was no distinction of majors nor minors, either *ex natura rei*, or by that old statute as the late statute expressly bears, and therefore gives a privilege, but to whom? Only to minors against whom apprisings are deduced; and, in case of their decease, if a minor be their heir, or succeed to them, that minor succeeding hath also the benefit to redeem within the age of 25 years complete, or if a major succeed, he hath the benefit of a year after his succession; but there is nothing provided for any other; so that if a minor succeed to a minor *singulari titulo* by apprising, assignation, or disposition, that second minor hath no privilege upon his own minority but only upon the minority of the debtor, to whom the minor succeeded in the right of reversion; and if it were otherwise, the legals of apprisings would never expire, and those who have thought themselves secure upon apprisings, would all be rendered unsecure, not knowing but there might be posterior apprisings whereunto minors had right, and certainly the debtor would of purpose assign his legal reversion to a minor, or might lend money to a minor and make him apprise, and so render the legal perpetual. It was *duplicated* for the pursuer, That the foresaid act of Parliament is most clear for him; for in this point it hath three periods: The first is, 'That, if the person against whom apprising is led, be minor, it shall be lawful to him at any time within his age of 25 years complete to redeem,' which indeed cannot operate for this minor pursuer; but the second period bearing, 'That notwithstanding the preceding laws and practiques of this kingdom, by which the legal reversion of comprised lands expired within seven years after the leading of the apprising, from the which his Majesty and Estates have, by this present act, excepted minors in all time coming, declaring the legal noways to run against them;' by which it is clear, that the legals of apprisings runs against no minor, but the years of minority are not to be accounted, which is a different and more extensive clause than the former; for by the former, if an apprising were led against a major, who died before the legal expired, though within a day or a month after the apprising, his heirs suc-

ceeding being minor would have no privilege of his minority, because the clause bears only, 'if an apprising be led against a minor;' so that being against a major to whom a minor succeeds, the minor could not found upon that clause; and yet it was never doubted or questioned, but it hath been constantly practised and allowed, That an apprising led against a major, if he die before the legal expire, a minor succeeding to him may redeem within the age of that minor's being 25 years complete; yea, if another major succeed to that minor, he will have a year further. Which custom must either be an extension of the statute *ad similes casus*, or must be built upon the second clause, whereby legal reversions are declared not at all to run against minors without exception or limitation, whether the apprising was led against that minor or not; and therefore the legal reversions of Wishaw's apprisings, as it was first continued by the minority of Anthonia Brown till her age of 25 years, which was profitable to all who appraised from her; so John Oliphant succeeding to her in the right of reversion by a posterior apprising, his minority gave him the privilege to redeem, and the years thereof were not accounted the running of the legal, so that if he came in place of Anthonia Brown a month before she was 25 years, the legal continues and runs not during his minority in the same way as when a minor succeeds to a major, the appriser dying within seven years of the legal; which is yet further cleared by the last period of that clause, bearing, 'And if it shall happen a minor having right to redeem comprised lands, to decease before his age of 25, and that another minor be heir, or succeed to him in his right of reversion, the minor so succeeding shall have the same benefit of redemption as if the apprising had been led against himself;' and as to the inconveniency, it is of no import, for the using of a summons for count and reckoning will prorogate a legal forty years, which can hardly be known, whereas posterior apprisings are easily known; and though the Lords do sustain apprisings *quoad* their equitable effect to get the appriser's satisfaction, even against many defects; yet they do most severely and strictly consider them as to exorbitant advantage after expiring of the legal, whereby the least punctilio wanting will annul them; for apprisings, by the first statute, were true and equivalent satisfaction of debts, and then there was no reason to consider minority; but when apprisings became to run of course before ignorant messengers, it was just and necessary to curb their exorbitancies, in that the legal should not run against any minor; and if minors were excluded the inconveniency were far greater, and would make a surprise against all the minors in the kingdom; for this minor did apprise before Anthonia Brown was 25 years, and might as easily then have used the order as now, but was secure that the legal did not run against him during his minority, and therefore used the order after Anthonia's 25 years. It was *triplicated* for the defender, That the second period must only relate to the first, and not to extend to all minors having right to redeem, otherwise that one word would serve for the whole, and the last period would have been superfluous which can give no privilege to a minor's

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singular successor upon these words 'if a minor be heir, or succeed in the right of redemption,' because that period begins thus, 'in case a minor decease,' unto which the subsequent words are to be referred; and therefore successors there are not singular but universal successors, it being frequent to repeat the same title under diverse expressions of heirs or successors, and successors may be here added to comprehend those who succeed not by retour but by precept of *clare constat*, or *per perceptionem hereditatis* by disposition to the apparent heir. It was *quadrupled* for the pursuer, That the repetition or amplification of clauses are never made use of to restrict the prior clauses so as they could not comprehend the posterior, though they were not expressed; and therefore the second period is general to all minors, or else minors succeeding to majors could never redeem by this statute after their minority; and the last period hath two branches; the first is, 'If a minor decease and another minor succeed-  
'ing him as heir.' The second branch is, 'Or if a minor succeed him in the  
'right of redemption,' which doth not relate to his decease or his succession *in universum jus*, but only in the right of redemption; and, in both cases, the second minor hath the privilege of his own and his predecessor's minority. And whatever may be said to fraudulent contrivances by voluntary deeds to prorogate legals; the case here is nothing such, but a legal succession by a second comprising.

THE LORDS found, That a minor succeeding to a legal reversion by a posterior apprising, hath not only the privilege of redemption by the minority of the minor, to which the second minor succeeded, but of his own minority, during which the legal reversion runneth not against him; and therefore found, that John Oliphant having apprised from Anthonia Brown during the continuation of the legal, by her minority, though he lived more than seven years after, all which years were within the continuation of Anthonia's legal, that this pursuer succeeding as heir to him in the legal before it was expired, had not only the benefit to redeem within Anthonia's age of 25 years, but that the legal did not run against him during his own minority; and having used the order in his own minority, the LORDS sustained the same, and declared.

*Fol. Dic. v. 1. p. 587. Stair, v. 2. p. 568.*

1736. December 7.

RAMSAY against BROWNLEE.

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THE legal of an apprising current in January 1652, being, by act 1661, prorogated until Whitsunday 1664, and the appriser dying during the time the prorogated legal was current, the question occurred, If the prorogated legal would run against his heir being a minor? If it did, the apprising would stand as a right of property; if not, it would be extinguished by intromission within the legal, as was further prorogated by a long minority. It was *pleaded* for the adjudger, That the privilege introduced by act 1661, was no more than a fa-