

No 64.
line, was
found re-
deemable by
the heir of en-
tail, who suc-
ceeded to the
lands, though
it was plead-
ed that the
act concerns
only appris-
ings of lands
to which the
purchaser
may succeed
as heir; and
that the act
is in favour of
creditors
only.

heir of line, for redeeming some apprisings against the said Lord Forrester, acquired by the defender, upon payment of the sums he truly gave for them;

Answered for the defender; The act of Parliament making apprisings redeemable from apparent heirs, concerns only apprisings of lands to which they might succeed as heir; whereas the lands in the apprisings, acquired by the defender, are tailzied, and such as he, the heir of line, is absolutely stranger to. 2. The heir of tailzie is not properly a creditor of the defunct, and so has no interest to redeem the apprisings acquired by his apparent heir of line, who cannot be considered an heir *quoad* these, more than intromission with the defunct's writs of the tailzied lands, would infer the passive title of behaviour against him.

Answered; The design of the act of Parliament is to secure creditors against the carrying away of their debtor's estate by acquisitions made by his children and representatives; and if it were sustained only as to the redemption of apprisings of lands to which the acquirer was *alioqui successurus*, then he might easily be eluded by the heir of line's purchasing apprisings of the tailzied estate, and the heir of tailzie's acquiring apprisings of what is untailzied, whereby the defunct's creditors would find themselves utterly defrauded. 2. The pursuer must be considered as a creditor to impugn every thing that may carry away the tailzied lands from him. And the parallel does not hold between the passive title of *gestio pro hærede*, which makes an universal representation, and the effect of the foresaid act of Parliament, which only precludes apparent heirs *à lucro captando*, and allows them full satisfaction of what they truly paid out.

'THE LORDS found the heir of line liable to denude in favours of the heir of tailzie, conform to the act of Parliament.'

In this process the LORDS found apprisings acquired by the apparent heir's factor, to be in the same case as if they had been taken in the constituent's name, then a pupil. 2. Found it relevant, that an apprising was in the defunct's charter-chest, either blank, or with a right thereto, although it was filled up with the name of Hugh Wallace the factor, and now in his custody; and he offered to prove that it was in his hands at the debtor's decease; yet the Lords would not prefer him to the probation, but allowed a conjunct probation upon this speciality, that the charter-chest having come in the possession of the curators and his factor, he might have had access to the apprising, and taken it out.

Fol. Dic. v. 1. p. 360. Harcarse, (COMPRISINGS.) No 319. p. 78.

No 65.

1637. February. FISS and LIVINGSTON *against* CUNNINGHAM.

AN apparent heir having acquired a disposition of his predecessor's lands from one having right thereto by an expired apprising; the LORDS found the

lands redeemable by his father's other creditors within ten years, as if he had acquired the right to the apprising.

No 65.

Fol. Dic. v. 1. p. 359. Harcarse, (COMPRISINGS.) No 325. p. 79.

1700. June 29. BORTHWICK against The EARL of WINTON.

No 66.

IN a competition between John Borthwick and the Earl of Winton, as creditors on the estate of Adingston, John *objected* against the Earl's apprising, That, by the 62d act 1661, all apprisings acquired by apparent heirs are redeemable from them within 10 years after the purchase; and *ita est*, this apprising is bought in by the Earl, the apparent heir's husband, and is all one as if a tutor, curator, or other administrator, should acquire it for their minor's behoof; and therefore as it is redeemable from the apparent heirs themselves, so also from their husbands; especially considering the same is provided to her heirs. *Answered*, Laws are not to be extended *de casu in casum*, especially in correctory acts of the former common law, and so being *stricti juris*, and the husband not mentioned in the act, it cannot be extended to his acquisition, unless they will subsume that he purchased in the apprising with the apparent heir's means; and *non refert*, that the apprising will devolve and descend to her son and heir, for he does not succeed *qua* heir to her, but as my Lord's heir; and the Lords have refused to extend the act to the case of husbands, 21st February 1673, Richardson, No 52. p. 5310; and 13th June 1674, Richardson, No 54. p. 5312.; and the parallel case of a goodsire's buying in a comprising, and disposing it to his grandchild, was found to make it redeemable, Maxwell of Pollock, No 51. p. 5309.; Sir George Monro, No 59. p. 5317.—THE LORDS were satisfied of the hardship in this case, and that there was *paritas rationis* to redeem from an apparent heir's husband, as well as from herself; but the same being omitted in the act, and already decided, they would not extend it till the same were re-considered in Parliament; and therefore repelled Borthwick's allegiance, and found the Earl's apprising not redeemable.

The act 1661 not extended against the husband of the apparent heir. See No 52. p. 5310.

Fol. Dic. v. 1. p. 360. Fountainhall, v. 2. p. 100.

See Kincaid against Gordon, No 7. p. 289.

See No 9. p. 3186.

Heir apparent has exhibition *ad deliberandum*. See EXHIBITION AD DELIBERANDUM.

What carried by escheat of an apparent heir. See ESCHEAT.

What deeds infer the passive titles. See PASSIVE TITLES.