

the case. It was likewise *alleged*, That the pursuer being but a personal creditor, and never having comprised by the act of Parliament, could have no right to redeem. THE LORDS did also repell this defence, in respect that the act of Parliament was conceived as to all lawful creditors, without requiring that they should comprise the debtor's lands, or the reversion of prior comprisings, which could not be the meaning of the act of Parliament, seeing it gave them right to redeem where the legal of comprisings was expired.

*Gosford, MS. No 385. p. 192.*

No 50.

1673. February 13.

MAXWEL against MAXWEL.

SIR GEORGE MAXWEL of Pollock having pursued Maxwel of Tinwal as representing his father, upon all the passive titles; he proponed a defence of payment, and a term being assigned for proving, he produced a discharge; and the pursuer at that same time held him as confest upon the passive titles, except as behaving as heir by intromission with the rents of the lands of Tinwal; as to which litiscontestation was made on this point, that he intromitted as having right to an apprising led against his father by his grandmother, whereunto he was assigned by her; and it being *alleged*, That by the act of Parliament 1661, betwixt debtor and creditor, apprisings returning to the apparent heir were redeemable within ten years for what they truly paid; the defender *deponed*, That he had got the assignation from his grandmother out of her affection *gratis*; whereupon it arose to the Lords consideration, whether such an apprising returning to the apparent heir was void without any satisfaction, or if it were redeemable from the heir for ten years after his right for the true sums therein contained.

THE LORDS inclined to think it redeemable for the full sums for ten years after the apparent heir's right, but not that it should be void without satisfaction, the assignation being without collusion upon so evident a cause as the affection of a grandmother, which would never have been done if it could not have profited the grandchild, but accresced to his creditors for nothing.

The defender, upon some objections against the discharges, offered to take it up, and to remit to the pursuer to prove the passive titles, and offered to compare presently, and depone thereupon; which the Lords refused, and found that any party pursued to represent proponing payment, did liberate the pursuer from proving the passive titles, and after litiscontestation, could not pass from the defence.

*Fol. Dic. v. 1. p. 359. Stair, v. 2. p. 172.*

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No 51.

Apprisings acquired by apparent heirs gratuitously, are redeemable from them within the ten years, for the full sums contained in them. See No 53. P. 5311.