

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 allegiances the Lords repelled.

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 prejudice 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.

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. Fountainball, v. 1. p. 344.*

1686. March.

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

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

No 62.

that an apprising purchased by an apparent heir during his father's life was redeemable by creditors.

No 63.

Altho' the act of Parliament mentions only expired apprisings, yet those acquired by an heir apparent within the legal were redeemable.

No 64.

An apprising of a defunct's estate, purchased in by the heir of