

which was preferable, and so to the liferent, which would undoubtedly exclude his apprising; and therefore he acquired right from the liferenter, being then in possession, and it is unquestionable, that any party who hath many titles, though they first make use of one, if that be reduced, they may make use of the rest, and so the defender, in respect the liferent infestment is improved, makes use of the tacks. The pursuer further *alleged*, That the tacks comprehended lands not contained in the contract of marriage; and, as to these, it was a voluntary deed granted by a husband to his wife *stante matrimonio*, and revoked by George Stuart's apprising, which is a legal disposition, in the same way as if the husband had disposed to George; likeas the Doctor's debt was anterior to these tacks, so that George Stuart in so far cannot clothe himself with these defective rights, against which his apprising would have prevailed. As to the superplus, the defender *answered*, That albeit the superplus were *donatio*, and that the husband might recall it indirectly by a subsequent disposition, it was never found that an apprising was such a revocation; and albeit the Doctor might reduce the tacks as to the superplus, being without an onerous cause, after his debt, yet that reduction cannot take effect, *ante litem motam*, to make the liferenter, or George Stuart, countable for the bygone fruits, or which is equivalent to impute them in the apprisings.

THE LORDS found, that the defender's intromission might be imputed to the liferent tacks, and not to the apprising; but, as to the superplus, they were not clear even to impute that in the apprising, upon the considerations alleged by the defenders, but as to that the hour prevented the vote.

Fol. Dic. v. 1. p. 459, & 460. Stair, v. 1. p. 676.

1674. February 10. BLYTH *against* CREDITORS OF DAIRSAV.

AN apprising being led upon several sums, some of which were before inhibition, the appriser possessing, his intromissions were found imputable to each of these sums proportionally.

Fol. Dic. v. 1. p. 459. Stair.

* * This case is No 90. p. 2873.

1711. February 2. GUTHRIE and WILLIAMSON *against* GORDON.

ONE having, at his entering to the possession of teinds, two expired apprisings of them, and a disposition thereof in security of a sum, and the said apprisings having been afterwards opened, and turned to securities, the LORDS allowed him to ascribe his intromissions wholly to the apprisings *medio tempore*, till the

No 7.

No 8.

No 9.

No 9. same were opened, thereby to defend himself from accounting for his intromissions in that interval.

Fol. Dic. v. 1. p. 460. Forbes.

* * * This case is No 121. p. 1020.

1723. November 29.

LADY DOWAGER of STRATHNAVER *against* CAPTAIN ROSS of Daan.

No 10. My Lady Strathnaver having obtained a decree of constitution against her son, the present Lord Strathnaver, upon several articles, *1mo*, The bygones of her liferent annuity; *2do*, For 4000 merks, as the liquidated sum in her contract of marriage, in place of her terce of moveables; *3tio*, For her children's aliment, funeral expenses, &c.; upon this decree she recovered a moveable subject, to the value of L. 800 Sterling, belonging to the deceased Lord Strathnaver. Thereafter, in a pursuit at the Lady's instance for recovery of her bygone annuities, the question occurred, Whether the foresaid L. 800 must be imputed into the bygone annuities as *durior sortis*, or into the other articles of the decree? It was *argued* for the Lady, *1mo*, That application *in duriozem sortem*, as a rule that in many cases contradicts equity, has never universally obtained with us. *2do*, The said L. 800 being a moveable subject, falls naturally, in the first place, to extinguish the moveable articles,—which was found relevant. See APPENDIX.

Fol. Dic. v. 1. p. 460.

See APPENDIX.