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tromission, Todrig's apprising is satisfied within the legal. It was *answered* for Major Biggar, Albeit the right was and had been his, and he in possession, yet the apprising cannot be satisfied thereby, unless he had possessed by virtue of the apprising, which cannot be alleged, because he offers him to prove that he entered and continued in possession many years before he got this right, by virtue of other infeftments. The pursuer *answered*, That, by the reduction at Todrig's instance, all Major Biggar's rights stand reduced, so that albeit by them he entered in possession, yet he cannot ascribe his possession to them after they were reduced. It was *answered*, That albeit his rights were reduced, there was no removing or action of mails and duties intented against him upon the prevailing right, and therefore his possession behoved to be ascribed to his prior right, though reduced. 2*dly*, He having now divers rights in his person, may ascribe his possession to any of them he pleases against this pursuer, from whom he derived not his possession, nor the cause thereof. 3*dly*, It was *answered*, That the pursuer might acquire this right *ad hunc effectum* to purge it, and the inhibition and reduction thereon, in so far as it might be prejudicial to his prior rights, and not to bruik by it. The pursuer *answered*, That albeit Biggar might have acquired this right to evacuate and purge the same, if that had been declared in his acquisition thereof, or otherwise legally, yet not having done it, he must be understood to bruik only by that right that was standing. 2*dly*, If he should declare that he did acquire it to purge it, then as his own right revives, which was reduced, so must this pursuer's right, which was also reduced in that same reduction, revive, especially *in casu tam favorabili*, that the pursuer may not be excluded from her liferent, which is her aliment, and seeing the decreet of reduction was obtained by mere collusion, and is offered to be disclaimed upon oath, by the advocates marked compearing therein.

The Lords found, that Major Biggar behoved to ascribe his possession to Todrig's right, and to none of the reduced rights, all being jointly in his person, and not having declared *quo titulo possidebat*, and that he cannot now declare that he makes no use of Todrig's right, in so far as may be prejudicial to his own prior rights, and makes use of it as it is prejudicial to the pursuer's rights, which were reduced together, seeing the pursuer's rights would have excluded the Major's other rights, to which he would now ascribe his possession.

Fol. Dic. v. 1. *p.* 459. *Stair, v.* 1. *p.* 512.

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An appriser having purchased in a preferable right, the question occurred, whether his intromissions

1670. *June* 8. Dr Hay *against* Marjory Jamieson.

Dr Hay, as heir to his father, who was distressed as cautioner for Con of Artrachy, pursues a reduction and improbation of all rights of the lands of Artrachy, and others, proceeding from Con, in favours of John Stuart advocate, William Neilson, Mr John Alexander, and Marjory Jamieson his relict, or Andrew Alexander, brother to Mr John; wherein there was produced an appris-

ing against Con, at the instance of George Stuart; likewise a liferent sasine of Helen Kinnaird, relict of Con, with a liferent tack to her of the lands contained in the sasine, and also of other lands, and another tack of two nineteen years of the same lands. There is also produced a disposition of the apprised lands by George Stuart to William Neilson; and because William Neilson failed in payment of 4000 merks of the price, George apprised the lands again from William Neilson, and upon all these rights there are public infeftments; there is also a second apprising, at the instance of Andrew Alexander, long after George Stuart's apprising from Neilson, but no infeftment thereon; and there is produced a disposition by George Stuart, as returning to the right by the second apprising, made to Mr John Alexander advocate, and by him to Marjory Jamieson his spouse, and public infeftments on these, and there is a decreet of certification extracted *contra non producta*. And now the Doctor insists on this reason of reduction, That George Stuart's first apprising against Con, the common debtor, was satisfied, by intromission within the legal, and so is extinct, and all the subsequent rights depending thereon fall therewith in consequence. It was *alleged* for the defenders, That George Stuart having in his person the apprising, and finding Helen Kinnaird (Con's relict) in possession of a great part of the lands by liferent infeftment, and a liferent and two nineteen years tacks, which would have excluded him, he purchased right and assignation thereto from the relict, and continued her possession thereby, and did ascribe his possession to the liferenter's right, and not to the apprising; so that his intromission being by another and more valid title, could not be ascribed to the apprising to extinguish it. The pursuer *answered*, That the defence ought to be repelled; because he had obtained certification against the defenders of all rights not produced; and albeit the liferenter's sasine be produced, yet the warrant thereof (the charter or precept) was not produced; so that it is now declared as false and feigned; and the sasine being only the assertion of a notary, without a warrant, is no title to which the intromission can be ascribed; and therefore it must be ascribed wholly to the apprising. The defenders *answered*, 1*st*, That albeit the charter be now improved for not production, yet it being a true evident, and now produced, the effect of the certification cannot be drawn back, to make George Stuart countable, who possessed *bona fide cum titulo*, which, though now improved, yet the effect of the improbation can only be *a sententia, lite contestata aut mota*, before all which the liferenter was dead, and the intromission ended, unless the charter being produced had been by witnesses or otherwise proved to be false. 2*dly*, Albeit certification be obtained against George Stuart and Marjory Jamieson, yet the certification is not against Andrew Alexander, from whom Marjory hath purchased right after the certification, and produced the apprising at Andrew's instance against Neilson; and alleges, that albeit the certification could take away George Stuart's right, in so far as concerns Marjory Jamieson, or her authors, yet that being no annulling of their right, by being transmitted in favours of the pursuer, but only as being

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ought to be imputed to the apprising as *duriori sorti*, or to the right purchased by him.
Found, that he might impute his intromissions to the preferable right.

A person possessed lands, of which he had two rights.
Found, that his possession was, in the first place, to be ascribed to the right which had *parata executio*, without prejudice to his maintaining his possession by the other right, after the first should be extinguished by intromission.

void through want of the necessary evidents, it cannot impede Andrew Alexander, against whom no certification is obtained, to defend George Stuart his author's right, and to ascribe George's possession to the liferent infeftment, whereof he now produces the charter. The pursuer *answered*, That he was not obliged to take notice of Andrew Alexander's right, because it was incomplete, no infeftment following thereon; and because it was null, being deduced against Neilson, after Neilson was denuded by the apprising led against him by George Stuart, and infeftment thereon; so that the pursuer having prevailed against George Stuart's right, which is the only valid right, and did exclude Andrew Alexander by the rule *vinco vincentem, &c.* and if this were otherwise sustained, no improbation could be effectual, unless all the invalid and imperfect rights were particularly improved, which cannot be known, and was never done. 3*dly*, Certification being extracted against George Stuart himself, all subaltern rights flowing from him fall in consequence, and so Andrew Alexander's right, which is but incomplete and latent. The defender *answered*, That albeit Andrew Alexander was not called, or certification taken against him as a party necessary, yet, before conclusion of the cause, he has a good interest to produce his apprising, and to allege, that the certification against George Stuart's author, who neglected to produce the liferenter's charter, could not prejudge him, as deriving right from George Stuart as a singular successor, much less could the neglect or collusion of Marjory Jamieson prejudge any other but herself; and therefore craved, that if the Lords would sustain the certification of the liferent charter against Marjory Jamieson, that it should be without prejudice to Andrew Alexander, as to his right of the said liferent, or to George Stuart's right of the liferent, in so far as the same is derived to Andrew Alexander.

The Lords adhered to the certification in so far as concerned Marjory Jamieson, reserving Andrew Alexander's right and his author's, in so far as concerned Andrew Alexander, as accords.

This cause being again called the 9th of June, the defenders ascribed their possession to the liferent, and two nineteen years tacks, against which there was no certification. The pursuer *answered*, 1*st*, That the liferenter having bruiked by a liferent infeftment, and having ascribed her possession to it, it being improved, she could not ascribe her possession to the tacks, *quia ex pluribus titulis ejusdem rei nemo fit Dominus*. 2*dly*, George Stuart the appriser having both the apprising and these liferent rights in his person, and not having declared his mind, by what title he possessed, his possession must be attributed *titulo nobiliori*, to the apprising, and his intromission imputed thereto, *et duriori sorti*, as the Lords use ordinarily to do *in odium* of apprisings, if the appriser adhere to the expiring of the legal; but, if the defender will grant the lands redeemable, the pursuer is content that the intromission be ascribed to the liferent right *primo loco*. The defender *answered*, That though George Stuart declared not by what title he possessed, yet his intromission must be ascribed *potiori juri*, to that right

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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 infeftment 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 disponed 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 DAIRSAY.

No 8.

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.

No 9.

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