

ances were allowed, the act of Parliament should be altogether frustrated, where the debtor should die leaving only heirs female, who, being married to husbands, might easily purchase from comprisers in their husbands name, and to the heirs of the marriage, which failing to the husband's heirs, to which they might be easily induced upon supposition that they have no heirs of their own; and the right in question being of that nature and condition, cannot be looked upon as acquired by a stranger; for it would thereby undoubtedly follow, that all creditors who should have to do with the heirs female, (would have no remedy), which is contrary to the meaning of the act of Parliament, which makes no such distinction. THE LORDS did repel the defence in respect of the reply, and found that the acquiring of the comprising by the husband being after the marriage, and that the fee of the land was provided to the heirs of the marriage who would have been heirs by progress to the wife's father, to whom the lands belonged; that the husband was not *tanquam quilibet*, but the purchase of the comprising ought chiefly to be looked to as done upon the wife's interest, and her heirs, and that if it should be otherways found it would make the act of Parliament elusory, wherever creditors had to do with heirs female, albeit that act was made to obviate fraud and circumvention.

Gosford, MS. No 578. p. 321.

1673. July 9.

CAMPBELL against CAMPBELL.

IN an action for mails and duties of the lands of Straquhair pursued at Kilpount's instance, as compriser of the said lands, compearance was made for the Laird of Arkinlaws, who *alleged* he had a prior comprising, and so ought to be preferred. It was *replied*, That he was denuded in favours of Straquhair's eldest son and apparent heir, and so his right fell under the late act of Parliament, whereby a lawful creditor might redeem from him, for payment of the true sums of money that he gave for his right. It was *replied*, That the right made by Arkinlaws to the son was *pura donatio*, and for no sums of money, and so fell not within the act of Parliament, which was only against the apparent heirs who did acquire rights to comprising led against the father. THE LORDS having considered the act of Parliament, did find, that if the right made by Arkinlaws to the son was *pura donatio*, and for no sums of money, it did not fall within the compass thereof, and cannot be redeemed but by payment of the whole sums contained in the comprising; but it being *alleged* that there was no probability of any such gift, and that it appeared to be but a contrivance, the LORDS, before answer, ordained Arkinlaws and the old and young Lairds of Straquhair to be examined upon oath, if Arkinlaws got any sums of money or any good deeds from the father or son for the right made by him.

Fol. Dic. v. 1. p. 359. Gosford, MS. No 619. p. 358.

No 52.

No 53.

Found, that an apprising, which had been gifted to the heir apparent, could not be redeemed from him, without payment of the full amount contained in it. See No 51. P. 5309.