they may redeem, and cannot extend to the debtor against whom the apprising was led.—It was *replied*, 1*mo*, That the Lords may, and do extend such equitable clauses *ad pares casus*. 2*do*, The creditors of the debtor may redeem, though they become creditors during that 10 years; so that as the pursuer might contract debt, it is no more prejudice to the apparent heir that he redeem it, than that these creditors do.—It was *duplied*, That the act can only be understood for creditors before the first legal expire; and if to the creditors during the second legal, it could only be to such who truly lent money, but could not extend to gratuitous deeds.—It was *triplied*, That the statute is in favours of the debtor's creditors indefinitly, and is not restricted to creditors before the expiring of the first legal; neither can the provisions of wives and children of a second marriage be excluded where there is *debitum naturæ*, and this declarator is at the childrens instance for their provisions. No 58.

THE LORDS found, That the power of redemption on this clause could not be extended unto the debtor, but to the creditors, but would not exclude the childrens portions, though during the second legal; yet would not sustain process for them till their bonds of provision were produced. See No 60. p. 5319.

Fol. Dic. v. 1. *p.* 360. *Stair, v.* 2. *p.* 811.

1681. *July* 19.

SIR GEORGE MONRO *against* GORDONSTON and Other CREDITORS of the Lord and Master of Rae.

No 59.
Found in conformity with Maxwell against Maxwell, No 51. p. 5309. that apprisings acquired gratuitously by heirs apparent, may be redeemed from them within the ten years; but for the full sums contained in the diligences.

SIR GEORGE MONRO having acquired right to an apprising of the estate of Rae, and having thereafter married his daughter to the Master of Rae, he by her contract of marriage contracted 10,000 merks of tocher, and likewise did dispone the apprising in favours of the heirs of the marriage; which failzing, to return to himself, with power to him to burden the right disponed with what sums he pleased during his life. The Creditors of the Lord Rae *alleged*, That this apprising is redeemable by the Creditors of the Lord Rae, against whom it was led, by the 62d act, Parl. 1661, betwixt debtor and creditor, declaring, that whensoever an expired apprising came in the person of the apparent heir, or another to their behoof, that for ten years thereafter it should be redeemable by the creditor of the debtor by the sums truly paid out therefor; and by the contract of marriage it is evident, that this apprising being conveyed to the heirs of the apparent heir, is in effect to the behoof of the apparent heir, and was expired before that time. It was *answered*, That statutes are *stricti juris*, and cannot be extended *ad similes casus*, and this case doth not quadrate with the act of Parliament, for his right was never to be in the person of the apparent heir, but of his heirs of the marriage; and there is no law that could hinder Sir George Monro to dispone to his own grandchild this apprising, who was not

No 59. the debtor's apparent heir, but the son of the apparent heir, and neither by the means nor to the behoof of the apparent heir, but without all collusion, seeing Sir George gave a competent tocher besides his disposition, and he may burden it at his pleasure; and seeing it was disponed freely, there can be no pretence, that without any payment it should be extinct; but the most that could be pretended is, that the Creditors might redeem it for the sums therein contained, which Sir George is content be declared; and so the design of the act of Parliament is fulfilled, that expired apprisings coming in the person of the apparent heir, shall not carry away the estate and defraud the creditors, but shall be redeemable during ten years for the sums by which the apparent heir bought or acquired the same; but it is beyond question, that an apparent heir may acquire right to an unexpired apprising, which cannot be redeemed from him for the price he paid, but by the full price of the apprising; for the statute is only in the case of expired comprisings bought and acquired by apparent heirs; and therefore the Lords, by their decision the 13th day of February 1673, Maxwell against Maxwell, No 51. p. 5309, found, 'That an expired apprising, disponed for love and favour by Tinwal's grandmother to him, was not extinct, because nothing was paid for it, but was only redeemable for the sums contained in the apprising.' It was *replied* for the Creditors, That the Lords, and all sovereign judicatures, may and ought to declare, that *non licet fraudem facere legi et quod non licet recte, non licet per ambages*; but this case is a direct contrivance, by which the whole design and effect of that just and necessary act of Parliament is eluded; for though the apparent heir may not acquire an expired apprising directly to himself, or a confident, yet whenever he, his son, or confident, comes to the condition that they may marry, they may cause the party who is to give the tocher to purchase with a part of the tocher an expired apprising, and dispone it to the heirs of the marriage, with a power to burden, as here; now if the apparent heir had acquired with this provision, 'That if the Creditors claim to redeem it, the disposition should 'be null, and it should return to the disponer,' were it not a clear fraudulent elusion of the law; and the power of burdening is the same; but as the Lords have cleared and extended this statute to apprisings coming in the person of an apparent heir, although his father were alive, so in justice it ought to be extended not only to the debtor and his apparent heir, but to the heir of this marriage, who is likewise apparent heir in *linea recta*.

The Lords found, that it being declared, that the apprising should be redeemable for 10 years after this contract, that the same was not extinct, being acquired for no sums from a near relation for love and favour, but that it was redeemable for the sums contained in the apprising.

Fol. Dic. v. 1. p. 359. Stair, v. 2. p. 895.