

1674. June 13.

RICHARDSON *against* PALMER.

No 54.

The act 1661 not extended against the husband of the apparent heir, unless the right acquired, tho' in the husband's name, is for the wife's behoof, or acquired by her means. See No 52. p. 5310.

WILLIAM RICHARDSON pursues Christian Palmer, to hear and see it found and declared, that an apprising led against her father, albeit expired, is to be purged by payment of the true sums that she paid for the same, it being acquired by her who is apparent heir, or by her husband, to the effect that the pursuer as creditor may affect the lands. The defender *alleged* that member of the libel was not relevant, that the husband acquired, not being so expressed in the act of Parliament 1661, betwixt debtor and creditor, on which this pursuit is founded, and the statutes being *stricti juris*, cannot be extended any further than the cases exprest. It was *answered*, That if this were sustained it would elide the act of Parliament, as to all heirs-female, and therefore it ought to be extended to this, being an equivalent case.

THE LORDS having examined upon oath Hallyards, who was alleged to have granted right to the husband, and likewise the husband himself as to the manner of acquiring of this apprising; by their oaths it appeared that Hallyards had acquired the right of the apprising at the desire of the apparent heir's husband, and that he had taken the assignation blank in the assignee's name, which remains yet so in his hands, and that he had promised to fill up the husband's name therein upon payment of the principal sum and annualrent contained in the apprising, but that the price was not yet paid, nor the name filled up, but that the husband had paid the annualrent thereof for some time, and that the land was better than these sums, and that he had not given any ease to the husband upon the account of the wife's propinquity of blood, or to the wife's behoof, or by her means, but upon his kindness to the husband.

THE LORDS having formerly sustained the libel on these terms, that the right acquired, though in the name of the husband, was to the behoof of the wife, and that she was to be fiar therein, or that it was acquired by her means and money, or that the ease was granted upon the account of her propinquity of blood; they found none of the members of the condescendence proven, and therefore assolizied.

*Fol. Dic. v. 1. p. 360. Stair, v. 2. p. 271.**

1675. February 17.

M'LURG *against* GORDON.

No 55.

An apprising of a predecessor's estate was found not redeemable from the apparent heir, who had acquired it

JOHN M'LURG smith, pursues John Gordon, as behaving as heir to his father, for payment of 400 merks, and insists against him, as behaving by intromission with the rents of his lands. The defender *alleged* absolvitor, because his intromission was by virtue of an apprising led against his father, whereunto he had right. It was *answered*, that by the act of Parliament betwixt debtor and creditor, apprisings acquired by apparent heirs are redeemable by creditors for the