

(REDEMPTION.)

No 3.

own heirs ; and, as he, or his heirs, could only redeem, so can they only declare the apprising to be satisfied by intromission ; neither can the reversion belong to two, both to the heirs of Robert, who was charged to enter heir, and to the heirs of the grandfather who died last infeft.—It was *answered*, That Robert never having in his person any real right, as never being infeft, albeit *fictione juris*, the act of Parliament gives the creditors like right upon his disobedience to enter, being charged, as if he had entered ; yet that is a mere passive title, and could give no active title to Robert, or any representing him, either to redeem, or to call the appriser to an account, till they were entered heirs to the person last infeft ; for albeit the creditor appriser has a real right, yet the disobedient apparent heir has none ; and albeit the Lords might suffer the disobedient apparent heir, or his heirs, to redeem the apprising ; because the appriser had no interest to oppose the same, being satisfied ; much less can the appriser now oppose the pursuers, who being infeft as heirs to Richard, have the real right of fee in their person, and consequently the right of the reversion of the apprising led against Richard's apparent heir ; which being a minor right, is implied and included in the property :

Which the Lords sustained, and found that the heirs of the person last infeft, being infeft, might redeem, or declare against an appriser, who apprifed from an apparent heir, lawfully charged, albeit they were not of that apparent heir.

Fol. Dic. v. 1. p. 22. Stair, v 1. p. 584.

* * The same case is reported by Gosford. See HEIR APPARENT.

1676. July 18.

GORDON against WATSON.

No 4
Competition of
orders of re-
demption.

WATSON having apprifed the estate of Irving of Hiltoun, in *anno* 1662, John Moor, in *anno* 1672, apprifes Federat's estate and Hiltoun's, for a sum wherein Federat was principal, and Hiltoun cautioner ; and shortly after, within the legal, Moor uses an order of redemption of Watson's apprising, whereunto Gordon of Seatoun hath now right, and pursues declarator against Watson, for declaring, that the order was lawfully used within the legal ; and that Watson, the appriser, after the order, entered in possession of Hiltoun's estate, and continued to possess till this time, whereby he is satisfied of the sums contained in his apprising by his intromission ; and that there is no necessity to produce or deliver the sum assigned for redemption of the apprising. It was *alleged* for Watson the defender, That the order used by Moor could not be declared ; because there were two orders of redemption used against Moor's comprising ; one by Federat, and another by Gilbert Collison, who apprifed Federat's estate, in *anno* 1671 ; which apprising Federat hath confirmed ; and, for Collison's further security, hath infeft him in an annualrent out of the miln of Federat : Likewise Watson hath right from

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Collifon, both as to the apprifing and annualrent; and there is an order used upon Collifon's right, for redeeming Moor's apprifing, and a declarator thereupon intented; and, therefore, Gordon of Seatoun, as having right from Moor, hath now no interest to declare Watfon's first apprifing to be fatisfied, feeing Moor's title is extinct by redemption, which Watfon now craves to be declared.—It was answered for the purfuer, That he hath the first order, and the first declarator of redemption of Watfon's apprifing, wherein he hath now intited; and Watfon hath no interest, by his order, againft Moor, to ftop the declarator used by Moor, but the first action of declarator fhould be first difcuffed; and the Lords may juftly refuse the declarator used upon Collifon, or Federat's order, by way of defence, and reserve it by way of action, and in juftice ought fo to do; becaufe, if the declarator of Moor's order be elided, by way of exception, by Collifon's order, then Watfon's first apprifing becomes irredeemable, and he carries an estate of 30 chalders of victual for 3000 merks: The only remied whereof is the interruption of the expiring of Watfon's apprifing, by the order used by Moor; which if it be not declared, hath no effect; and, for this wicked design, Watfon hath acquired Collifon's right, that he may exclude Moor's declarator; but though Moor's order be declared, Collifon's order may also be declared, whereby Watfon, as having right from Collifon, will come in Moor's place.

THE LORDS refused to fustain the declarator of Collifon's order, by way of defence, to exclude the declarator of Moor's order; but declared Moor's order; and found Watfon, the first apprifing, countable, after the legal, upon Moor's order.

Stair, v. 2, p. 451.

1715: Jun 21.

Sir GEORGE INNES of Coxtoun; and JAMES WISEMAN, his Assignee, against JAMES CHALMERS.

JAMES CHALMERS having right, by progress, to an apprifing of the lands of Linkwoods, led in the 1671, there is a declarator of redemption purfued by Coxtoun, and Wiseman, his assignee; and a declarator of expiration of the legal by the said James Chalmers, as having right to the comprifing.

It was alleged for the reverfer, That the comprifing was still redeemable; becaufe, by contract betwixt one of Chalmers' authors having right to the comprifing, and the tutor of the debtor, in anno 1672, the comprifing was declared redeemable for payment of 6000 merks; which contract is narrated in the conveyance to Chalmers.

It was answered: The contract contains a fpecial provision, that the fums fhould be paid at Whitfunday 1673; as also, that the said agreement, nor no clause

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A comprifer may, by contract within the legal, perpetuate the reversion.