No 57.
that the husband of an heir apparent may acquire apprisings without being liable to redemption on the terms of an heir apparent.

mission had by her husband, was *singulari titulo*, viz. an apprising against her father, whereunto her husband had right.—The pursuer *replied*, That by the act of Parliament 1661, apprisings coming in the person of the apparent heir, or any other to their behoof, are redeemable by payment of the sum they truly gave out, and this apprising being acquired by the husband of the apparent heir, it was alike as if it were acquired by herself, or must be presumed to her behoof, otherwise the act of Parliament would have been ineffectual as to all heirs-female.—It was *duplied*, That statutes being *stricti juris*, cannot be extended by the Lords; and this point was already determined betwixt Lamont and the Laird of Hall-yards, No 52. p. 5310; and that unless the apprising was acquired by the means of the heir-female, or to her behoof, or that she were to be liar therein, the acquisition by the husband was not redeemable upon the sums he paid, though he might have gotten ease upon the account of his wife.

Which the Lords did also sustain in this case.

Fol. Dic. v. 1. p. 360. *Stair, v. 2. p.* 672.

*** Fountainhall reports the same case:

An action was brought by Andrew M'Dougal against Sir Henry Guthrie's son for payment of a debt owing by his wife's father, and convenes him as intromitter.—*Alleged* he did it by comprisings he had acquired.—*Answered*, The apparent heir, by the 62d act in 1661, acquiring rights, they are redeemable from him.—*Replied*, It is not here the apparent heir that purchases, but her husband.—*Duplied*, In 1674, Richardson *contra* Palmer and Halyards, No 54. p. 5312. the Lords found the husband in the same case.—*Triplied*, That pratique was just contrary; for it is a correctory law, and so to be strictly taken. ——The Lords found the husband not liable, unless it were proven he acquired the apprisings with the wife the apparent heir's means, or that the fee of the right taken to the apprising terminates on her and her heirs; but that an ease and compensation was got on the wife's account, seems not fully relevant.

Fountainhall, MS.

No 58.
The power of redeeming apprisings bought in by apparent heirs, is competent only to creditors, not to the debtor himself.

1680. *December* 3. Nasmith *against* Nasmith.

Sir Michael Nasmith pursues declarator against James Nasmith his son for redemption of his lands of Posso, apprised by Dr Burnet, on this ground, that the right of the apprising coming in the person of James his apparent heir, it is redeemable by the space of 10 years after the apparent heir's right thereto, for the sums he truly paid out, which his father is willing to pay him.—It was *answered*, That this power of redemption being introduced by the act of Parliament 1661, betwixt debtor and creditor, it is only in favour of creditors, that

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