THE LORDS find, "That the petitioners, the executors and next of kin confirmed to Daniel Spalding, the apparent heir, have right to the interests of the reversion of the price that fell due, and were not uplifted during his life." No 20.

Ordinary, *Lord Ankerville.* For George Spalding, *Solicitor-General, Mat. Ross.*
For Rebecca Spalding, *Rolland.* Clerk, *Menzies.*

C. *Fol. Dic. v. 3. p. 258. Fac. Col. No 218. p. 457.*

SECT. IV.

Effect of the Apparent Heir's interference, and extent of his Interest in the Estate.

1674. *February* 24. CHALMERS *against* FARQUHARSON.

No 21.
Found that the apparent heir's taking right to an apprising within the legal, and possessing the lands apprised, did not infer a passive title.

JAMES CHALMERS, advocate, pursues Farquharson of Inerveray for payment of 600 merks, wherein he was cautioner, and distressed for his father, and insists upon this passive title, that the defender had taken right to an apprising led against his father, of lands whereof he was apparent heir, and that within the legal. It was *answered*, That this was no relevant condescendence; for there was nothing to impede an apparent heir more than any other, to take right to any apprising against his predecessor, within or after the legal; for thereby he was only singular successor; and albeit by the late act of Parliament, all apprisings acquired by apparent heirs are redeemable from them by creditors, for the sums they truly paid, yet that cannot be done in this but in a separate process.

THE LORDS found that the apparent heir's taking right to an apprising within the legal, and possessing the lands apprised, did not infer the passive title; but allowed the pursuer in this process to purge the apprising, by payment of the sums truly paid out by the apparent heir; but found him not liable personally for the value of the lands above these sums, as being thereby *lucratus*, in respect of the tenor of the statute, bearing only the apprising to be redeemable.

Stair, v. 2. p. 268.

1682. *February* 2. GORDON *against* FRENDRAUGHT.

No 22.
An apprising acquired for the behoof of

IN an action of declarator, pursued by Adam Gordon, as creditor to the deceased Viscount of Frendraught, this Viscount's grandfather, against this Vis-

No 22.
the debtor's apparent heir, although by means of his mother's funds, found to fall under the act of Parliament, by which apprisings acquired by apparent heirs are redeemable by creditors.

count, the Lady his mother, and Bogney her present husband, (which Bogney stood infeft upon an expired comprising deduced at Gregory's instance upon the estate of Frendraught, and who had given a back-bond declaring that his name was in the comprising for security of what sums he had or should advance, and for the Lady's security of her jointure, and for the fee of the estate to belong to this Viscount, in implement of the contract of marriage betwixt the deceased Viscount and the Lady), craving that the comprising in Bogney's person, might be declared liable to this Viscount's grandfather's debt, in regard the comprising was acquired by the deceased Viscount his means, and was blank in his possesion, and so was redeemable upon payment of the sums of money truly paid, conform to the act of Parliament 1661. It was *alleged* for the Lady and the Viscount, That the comprising was not acquired by his father's means, but by a sum which was secured by an heritable security standing in his mother's person; and that his father was only a liferenter, and that he would succeed as heir to his mother thereto. The Lords found, That this right in Bogney's person, albeit acquired by his mother's means, fell under the act of Parliament, and therefore declared the remainder of the estate liable over and above Bogney's satisfaction, the Lady's jointure, and 20 chalders of victual; which the Lords did allow to the Viscount for the foresaid heritable securities which stood in the mother's person, and was uplifted and applied for acquisition of the said comprising.

P. Falconer, No 20. p. 10.

1708. *July* 27. Alexander Ragg *against* Isobel Brown, Lady Hartside.

No 23.
One having disponed to another all right he might happen to have to a woman's estate, to whom he, the disponer, was presumptive heir, with a procuratory to serve him heir, in case she died without heirs of her own body; the procuratory though granted in her lifetime, was sustained as a sufficient warrant to serve the granter, who was out

At expeding before the macers, the service of Alexander Ragg, who was out of the kingdom, as heir to Margaret Williamson of Barnhill, by virtue of a procuratory granted by him for that effect, to David Smith, uncle to the Laird of Methven; it was *objected* by Isobel Brown, That the procuratory produced is null, being granted by Ragg long before Margaret Williamson died, or the succession devolved to him as apparent heir; and could not revive by her death, according to the rule *quod ab initio vitiosum est, &c.*

Answered for David Smith; 1*mo*, It is *jus tertii* to Isobel Brown, who has no interest to make such an objection. 2*do*, He produced a disposition to him by Alexander Ragg, conveying all right he had to Margaret Williamson's estate, in case she died without heirs of her body, and the succession fell to him; and containing a procuratory to David, in that event to serve and retour the disponer as heir to Williamson, which procuratory is now good, when the condition is purified. For what more ordinary, than resignations by apparent heirs, whose supervening service renders the same effectual? And *mandatum post mortem exequendum* subsists after the mandant's death, both by the civil law, and by ours, Jan. 18. 1678, Gray *contra* Ballegerno, *voce* Tutor and Pupil. But whatever