

act 37 Par. 5 & 3 not exceeding the worth of the lands, and where it doth extend to pay the value of the lands, according as the same shall be determined by the Superior upon a proof thereof. In which case, the Apprizer or adjudger must transfer his right and Debt to the Superior; with a full and absolute Warranty for the same; Reserving to himself action against the Common Debtor, in case as the Debt is not satisfied by the Superior 29 July 1713 University of Glasgow contra Hamilton of Dalziel. The Superior is allowed that benefit of Redemptio his option to take the Land to himself upon payment of the debt: He must have the Dominium Directum in his own person, as the Vassal who is bound to have the Dominium Utile. But the Superior is set off from this option by the Land to himself, after he hath accepted payment of a year's Rent from the Apprizer 5 March 1639 Black contra L. Pitmedden. In a Superior of Apprized Land allowed to possess the same, and to sell at will for his Proposition was not hindered to redeem the Apprizer, keep the Land to himself; the allowing the Superior to possess the Land got up a year's Rent not being thought equivalent until the year had actually paid a year's Rent, Gordon die Inter Episcopum & Vassal whose Superior Redeemed his lands apprized or adjudged by payment of the Debt, may again redeem them from his Superior by payment of money without any thing for entry so June 1671 not contra Drumlanrig, McKenzie observ. act 7 Par. 23 & 68 on act 19 lib. 2 of the Vassal not being hindered.

Where an Apprizer of Ward Land had got a Charter from the Superior without Infeudment in the Vassal's life time, it was found that the Ward did not fall by the Vassal's death Hope contra Dal. In appraising Hamilton contra Gentils of Newburgh. No more belong to his Heir Hope ibid. Prichard contra Reliance contra Houn Stair lib. 3 Tit. 2 § 19. An Apprizer or adjudicator completed by Infeudment is Effectual to all the Intents and purposes of a Rent Redemable Right, as the pursuing main and Duties, Removing Gentils, and States the Apprizer or adjudger as Vassal in the Land apprized or adjudged. But a Comprizer or adjudger cannot till he is Infeud, pursue a Removing even against the Debt from whom the Lands were apprized or adjudged 2 Feb. 1629 Galda contra L. Bagmiln the Apprizer during the years of the Legal War but is not bound to Enter to the Possession Stair lib. 3 Tit. 2 McKenzie Just lib. 2 Tit. 12 § 9. But then he cannot hinder a posterior apprizer to possess or do Diligence, unless he take possession do Diligence and be accountable 11 Feb. 1636 Calquhoun contra Balvie 28 July 1671 Murray contra L. Southesk and others.

ibid. McKenzie observ. on act 6 Par. 23 & 6.

The Statute (act 6 Par. 23 & 6) makes a possessing apprizer liable only for his actual Intrusions. But it being thought a hard ship upon the Debtor and other apprizers, to be Debarred from possession by one who, knowing himself not accountable for Inmissions might suffer the tenants to break and the lands become in a great measure waste: Custom hath obliged an Apprizer who once enters to possession, to continue his Intrusions, and to account for the Loss, he is liable to pay to the Debtor, and for his omissions as well as Intrusions Stair ibid. McKenzie observ. on act 6 Par. 23 & 6. Hence the Debtor on any Intrusion to the Debtor or parties concerned that they may take the Lands in their own hands; which any apprizer possesses within the Legal War of 1639. The Statute of 1639 provided that the Apprizer's Entry, the Rent and the Vassal's Rent for the lack of duty, the the said were afterwards given to the tenants and Lay waste. And after the foregoing, he might either have laboured the ground himself, let it to other tenants to the best advantage, or bound the Vassal himself to do so, or else required and allowed the Debtor to do so 10 Feb. 1632 Hamilton contra Landers. An Apprizer was accountable for the Rent the Land paid at his Entry, deducting his own Rent Defalcations upon the account of the necessary orders of the Rent in subsequent years or the like 4 January 1662 Walton contra Rosewal. Upon an Apprizer was made accountable for the whole Rent of the Land he possessed by his appraising both for his Intrusion and omission, not only till the appraising was satisfied but even after ward while he continued to Intrude with any part, tho he had then no title in his person, and one having Interest might have hindered him to meddle farther, and any Intruder without a title is accountable only for his Intrusion: In Respect it is unreasonable that an Apprizer after he is satisfied should be in a better Condition than before, and it is his part to abandon the possession after he is satisfied, seeing no other person but himself can know when he is satisfied till that be determined in a long process of Count and Reckoning 26 January 1671 Cass contra Cunningham & Co. But an Apprizer having Entry to the lands when waste and ploughed them, and