

1630. *December 15.* YESTER *against* VASSALS.

No. 4.

In a declarator of non-entry pursued by the Lord Yester against one of his vassals, the libel bore, that he being infeft in the barony of F. whereof the lands were a proper part and pertinent holding of him, &c. the Lords found, That, for proving of his summons, the pursuer's sasine did suffice; which bore him to be infeft only in the said barony of F. generally, without mentioning that he was seised in the said lands of N. and that he needed not prove the said lands of N. to be parts and pertinents of the said barony of F.; but they thought the defender should disclaim him, if these lands of N. were not a part of the said barony of F. holding of the pursuer.

Spottiswood, (NON-ENTRY) p. 224.

1667. *June 28.* MR. JAMES DOWGLAS *against* WILLIAM LEISK.

No. 5.

An apprising with a charge denudes not the vassal, nor hinders his life-rent escheat to fall.

Mr. James Dowglas, as donatar to the life-rent escheat of William Leisk, pursues a special declarator against the tenants for mails and duties. It was alleged for William Leisk, That the lands in question were apprized from William Leisk, the rebel, and the superior, granter of this gift, charged to infeft the appriser long before the rebellion; to which apprizing William Leisk has right, during his life; so that the charge being equivalent to an infeftment as to the time, and to the anteriority of the infeftment, and by drawing it back to the charge, doth prefer the appriser from the time of the charge. It was alleged for the donatar, That albeit a charge against the superior be equivalent to an infeftment in some cases, yet in other things it is not equivalent, as it is not a right sufficient for the appriser to remove tenants; and therefore the vassal is not denuded thereby; otherwise, the superior could have no casualty after such a charge, because the appriser not being infeft, his life-rent could not fall. It was answered for the defender, That albeit this consequence should follow, it is the superior's own fault, that did not receive the appriser. It was answered, *Non constat*, it was his fault, for he might have just reason to suspend; and albeit it were his fault, the law hath not determined this to be his penalty, to lose his casualties.

The Lords repelled the defence, and found the charge on the apprising did not denude the former vassal, but his life-rent fell, and affected the ground.

Stair, v. 1. p. 465.

1669. *February 9.* BLACK *against* FRENCH.

No. 6.

Apprising with a charge against the superior does not state the appriser as vassal; and the apprising being of ward-lands, the ward was found to fall by the

death of the debtor, who still continued in the property, and not by the death of the appriser. No. 6.

Stair. Gosford.

* * This case is No. 30. p. 6911. *voce* INFECTMENT.

1671. July 20. LINDSAY against MAXWELL.

No. 7.

A gratuitous bond granted by a ward-vassal to his apparent heir, in order to lead an adjudication, upon which the heir was infeft during his predecessor's life, was found to exclude the casualty of ward; for simulation or fraud could not be relevant in this case, seeing the vassal might have directly resigned the lands in favour of his heir, and the King refuses no man; but it was found, That as soon as the apprising is extinct, whether before or after the defunct's death, the ward takes effect.

Stair.

* * This case is No. 63. p. 10381. *voce* PERSONAL AND TRANSMISSIBLE.

1672. December 19. HIS MAJESTY'S ADVOCATE against Mr. JAMES LOWES.

No. 8.

In a pursuit for the ward and marriage of Mr. James Lowes, as fallen to the King by the decease of his father, who died infeft in the lands of Gordon, which held ward of the King, it was alleged for the defender, That his father being only infeft upon a comprising, which was satisfied by intromission and payment before his death, his right became thereby extinct, and his son's ward and marriage could not belong to the King. It was replied, That his father being the King's vassal, and the debtor being denuded by the comprising, so that, by his death, the ward and marriage could not but fall to the King, unless the defender's father had renounced or resigned his right, whereby the debtor did of new become the King's vassal, he did remain vassal to the King until his death, and so the ward and marriage of the defender did fall to the King. The Lords did sustain the defence, notwithstanding the reply; and found, That a comprising, albeit infeftment followed, was such a right as might be extinguished by payment or intromission, without any renunciation or resignation, and that a naked discharge would so denude the compriser, that the debtor from whom he comprised did remain the King's vassal, and by his death only the ward and marriage of his heir could fall to the superior.

In comprising of ward lands, the ward or marriage of the compriser's son, does not fall to the superior by the compriser's death, but by the death of the debtor.

Gosford MS. p. 293.