

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.