

No. 18. it were unjust to shuffle vassals out and in, to the superior's prejudice; *2do*, The act of Parliament concerns the reversion and order as it is regulated between debtor and creditor, but not the superior's profits; and the practick cited does not meet, but is in favours of the superior, who may claim the benefit of extinction of the apprising, where he can have more benefit by the debtor's ward than by the appriser's, whose heir perhaps was major; and by law the superior may pay the debt when he is charged, and take the appriser's right; *3tio*, The apprising is liker a disposition than a wadset.

The Lords having made an act before answer, and there being several discharges of the intromissions before Nicol Edgar the appriser's decease, the Lords found, that there remained then a considerable part of the apprising unsatisfied, and decerned the intromitter for the years after Nicol's death, during the legal, which was current many years by the minority of his heir. But the Lords did not advise the second and third allegiance; whereupon there was a declarator of redemption raised by the defender; who being broke, and in the Abbey, none appeared for him at advising.

*Harcarse, No. 1011. p. 286.*

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1696. *January 14.* CARNWATH *against* CREDITORS of NICOLSON.

No. 19.

A holding was found to be ward, though besides *servitia debita et consueta*, it expressed a sum of money.

*Fountainhall.*

\* \* \* This case is No. 6. p. 6411. *voce* IMPLIED DISCHARGE.

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1739. *July 24.* DONATAR of WARD *against* CREDITORS of BONHARD.

No. 20.

Found, That an appriser infest, though the ward falls not by his death, but by the death of the debtor, will yet exclude the superior, and be preferable to the donatar of ward, just as much as an annual-rent confirmed by the superior; because though the infestment be given by the superior in obedience only, yet is it in obedience to the law; and a strong argument was drawn from analogy of the act, allowing ward-lands to be set in feu, which feus, by constant practice, are held to be good against the ward, so that the donatar can draw nothing but the feu-duties.

*Kilkerran.*

\* \* \* This case is No. 14. p. 16453. *voce* VASSAL.

The Wardatar of old had the keeping of the Pupil; See TUTOR—CURATOR—PUPIL.—Ward, in what cases excluded by the Superior's Confirmation; See CONFIRMATION.—When the Ward is excluded by Terce, Courtesy, &c. can this be proponed by third parties; See JUS TERTII.