ing base infeftments, could never infer this recognition; because they were given after the legal of Waterton's apprising was expired, which was led in 1649, so the seven years ran out in 1656; and so Sir George being entirely denuded, his deeds after that could not prejudge the appriser, who by the elapsing of the legal was stated in the full right and property of the lands. Answered, After the legal, a creditor has it in his option either to take the land adjudged *in solutum*, or to retain it still as a security, and to intromit with no more than his annual-rents. But, 2*do*, by the 62d act 1661, the legal of all apprisings not expired in 1652 are prorogated for three years longer, within which space Sir George granted these base infeftments that incurred the recognition; and so he was still heritor. Replied, It is true, the legal of such apprisings is prorogated to 1664, but that prorogation was only *ad particularem effectum*, that they might redeem in that time, but did not convey any right to the reverser to grant base infeftments, but the apprising *quoad* that effect was to be reputed expired.—The Lords having considered this nice abstract point, found the recognition incurred by the reverser's deeds within the legal, and that it would not fall by the apprisers, who had only a real pledge, for security of their money, in the apprised or adjudged lands during the currency of the legal, and did not fully denude the debtor till after the legal was run; and found the three years prorogation by act of parliament 1661, had all the effects of the ordinary legal, and that the reverser continued *dominus* and heritor till the full outrunning of the same. No. 12.

Fountainhall, v. 2. p. 382.

1713. *February* 12. ERSKINE *against* HAMILTON

No. 13.

No casualty of superiority doth fall through the death of an appriser infeft, who, during the legal, has conveyed his right by disposition in favour of the reverser, recorded in the register of reversions.

Forbes.

*** This case is No. 73. p. 6515. *voce* IMPLIED DISCHARGE.

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

No. 14.
By whose death the casualty of ward falls, and by what it is excluded.

The Lords were unanimous, that ward does not fall by the death of an adjudger though infeft within the legal, nor even after the legal, unless he was in possession; for till then, even after the legal, the adjudger is not deemed proprietor, which one must be before ward can fall by his death; he is but a creditor

No. 14. who may relinquish his adjudication, and, by diligence, affect the person or other effects of his debtor.

They were also unanimous, that, where an adjudger is either infeft or has duly charged the superior to enter him, such infeftment or charge will, even within the legal, exclude the donatary of the ward, to the effect of preferring that adjudger until he be paid of the debt in his adjudication: For though, where the superior infefts an adjudger, it is rather an act of obedience in the superior than of consent, yet, as it is an act of obedience to the law, so it is deemed a consent also in obedience to the law, to the adjudger's security for his debt; and whatever is the effect of the infeftment, the charge, *quoad the superior*, has the same effect.

Notwithstanding these principles, the Lords were much divided upon the particular *species facti* in the present case. The ward had not here fallen by the death and minority of the heir of the debtor, against whom the adjudications had been deduced; for, upon his death, his son and apparent heir being major, had become purchaser at a judicial sale, and was infeft by the superior upon the decree of sale: But before the adjudgers had received payment of the sums for which they had been preferred by the decree of ranking, the purchaser died, and, by the minority of his heir, the lands fell in ward.

In hac specie facti, the Lords at first, upon the 9th of February, 1739, found, "That the adjudication, charge against the superior, and offer of a charter with a year's rent, founded on by the adjudgers, was not relevant to exclude the casualty *now after the sale*."

But thereafter, 24th July, 1739, this interlocutor was altered, and it was found, "That the donatary could not take the benefit of the ward in prejudice of those creditors adjudgers, who had charged the superior, &c. but that, notwithstanding the ward, they had right to the mails and duties in satisfaction of the sums found due to them by the decree of ranking, to the extent of the shares they were to draw out of the price."

The argument of the one side was, That the superior having received the purchaser in pursuance of the decree of sale obtained at the suit of the creditors themselves, and so far therefore with their consent, they were *personali objectione* barred from objecting to the superior's casualties falling through his death. Answer, The creditors' consent to the sale, and the superior's receiving the purchaser, was still with and under the quality, whereof the public law ascertained the superior, viz. That their adjudications should remain effectual after in like manner as before the sale, until actual payment or consignation of the price.

Kilkerran, No. 2. p. 527.

*** See Act of Sederunt, 8th February, 1749.

See APPENDIX.