

THE LORDS considering, whether that could be understood of any other wards, than such as had fallen before the warrandice, or if it could extend to all subsequent wards, of the superior's heir, and so to nonentries, &c. which they thought hard; seeing all holdings were presumed ward, unless the contrary appear, and the superior could not be thought to secure against subsequent wards, unless it were so specially expressed, all wards past and to come; yet seeing it was found formerly that if the superior take such a gift, and be bound in warrandice, that the same should accresce to the vassals, paying their proportional part of the expense, and composition; they found the defence, that this gift was to the behoof of the superior, relevant *ad hunc effectum*, to restrict it to a proportional part of the expense. See WARRANDICE.

Fol. Dic. v. I. p. 514. Stair, v. I. p. 270.

No 11.

1668. January 8.

FORBES against INNES.

A WIFE being taken consentor to her husband's disposition of lands, to which she has no right for the time, is not barred thereby from setting up any right thereafter, acquired from a third party, in competition with the disponee; consent implying only, that upon any right from her husband or them in her person, she shall not impugn the deed to which she has consented.

Fol. Dic. v. I. p. 514. Dirleton. Stair.

No 12.

* * This case is No 81. p. 6524. *voce* IMPLIED DISCHARGE AND RENUNCIATION.

1675. December 22.

TOWN of MUSSELBURGH against SCOT.

ADAM SCOT, his authors and predecessors being infeft in the heritable knaveship of the mills of Musselburgh, the town of Musselburgh having acquired right from the Duke of Lauderdale to the superiority of the knaveship, pursue a declarator of non-entry thereof against the said Adam, who *alleged* absolviator, because he stands infeft by the Bailies of Musselburgh. It was *replied*, *Non relevat*, because that infeftment was granted only upon obedience upon an apprising led at the defender's instance, at that time when the town had not acquired the right of superiority. It was *duplicated* for the defenders, That *jus superveniens auctoris accrescit successoribus*; and therefore the supervening right to the town, must accresce to the defender. It was *triplicated*, That the maxim holds not in acts necessary, done for obedience. *2do*, It holds not, except where there is absolute warrandice, or a cause onerous importing it. It was *quadruplicated*, That here there was no necessary act, because there was no charge of horning, nor suspension.

No 13.

A supposed superior granted infeftment to an appriser. He afterwards acquired the superiority. This did not validate the right of the appriser, who had paid no composition.