

(OF THE ACT 1491.)

1534. July 21.

JANET LOGAN *against* ELIZABETH CAMPBELL and WILLIAM WALLACE.

No 5.

During the time of ward, the superior bound to aliment the relict.

GIF ony man havand ane lauchful wife, and ane son gotten with hir, puttes his son in fee of all his lands, without ony reservation of tierce to his wife, and it happen thairafter, that he and his son baith deceis, and thair-throw all his lands fall in the superior's hands, be ressoun of ward and non-entries, in sic fort that the said wife, have na part nor portion thairaf be ressoun of liferent tierce, conjunct fee, or otherwayis; the superior, induring the time of the ward and non-entries, and thairefter the richteous air of the saidis landis, efter his entris thairto, may be compellit to give zeerie to the said wife, for her sustentation, ane ressonabill deutie of the maillis of the saidis lands, to keive upon, efter the modification and descretion of the judge.

*Fol. Dic. v. 1. p. 28. Balfour, (HUSBAND and WIFE) p. 95.*

1619.

WHYTFOD *against* CALDERWOOD.

No 6.

An heir found entitled to aliment from wardatars and liferenters, although he had lands of his own at his father's death, afterwards comprised for his father's debts.

FOUND, That the heir ought to have modification against the wardatars and liferenters, albeit he have lands and rents of his own, the time of his father's decease, because sincefyne comprised for his father's debt; and there it was replied, that the comprising, was led by the tutor upon his own charges; it was found that he might lawfully so do, because it was for his own debt, the pupil having other tutors.

*Fol. Dic. v. 1. p. 29. Hope, (De Heredibus et Hereditatibus) v. 2. folio 130.*

1622. March 16.

HEIR of Milnton *against* CALDERWOOD.

No 7.

The modification of an aliment was refused to a vassal of wardlands, because he had other rents; and the superior was found only bound to pay proportionally, to supply the defect of the aliment.

THE heir of Milnton having obtained a decret of modification to be paid for his aliment, by the superiors and possessors of his ward-lands, during his minority; George Calderwood suspended; in discussing whereof the LORDS found, That so long as he had sufficient free rent of blench, or free lands or teinds, he could have no action for modification from the wardatars. Next they found, That the yearly profit of the lime quarry could not be counted in the rental, unless the minor and his tutors would renounce all action they could move against him, for felling of the limestone to strangers; as also that he would not be charged for any more for his part, than according to the proportion of the free rent of the lands holden of him, and of the ward-lands holden of the King.

*Fol. Dic. v. 1. p. 29. Haddington, MS. No. 2617.*

\* \* \* This same was found, in the case Buchanan against Stewart, 1st Decem-ber 1534, from Balfour. See SUPERIOR.