

W A R D.

1541. *March 2.* *GOURLEY against SPENCE.*

No 1.

TERCE excludes the casualty of ward.

Colvil.

*** This case is No. 1. p. 23. *voce* ACCESSORIUM SEQUITUR PRINCIPALE.

1553. *February 28.* *GEORGE GORTHE against LORD METHVEN.*

No. 2.

Gif ony man maryis ane heretrix of landis, he aucht and sould, efter hir deceis, bruik and joise the samin during his lifetime, be ressoun of the curtesie of this realme; and the samin landis may on na wayis, during the space foirsaid, fall in the superiouris' handis be ressoun of ward, notwithstanding that the heritour thair-of be of les age the time of the deceis of his mother.

Balfour, (WARD) p. 254.

1670. *December 6.* *CUNINGHAM against CRAWFORD.*

No. 3.

In an action of warrandice moved by James Cunningham of P. against N. Crawford, heritor of D. his tutors and curators, for warrandice of a life-rent tack, which the said Crawford's father set to the pursuer, wherefrom the pursuer was warned to remove by the donatar of the ward of D. the defender excepted, He owed not warrandice, except so many years as it should happen the pursuer to want by the ward, that he should have so many years after the forthcoming of the ward, and so for the present he ought not to be decerned for any warrandice. The pursuer replied, That his tack was a life-rent tack, and that such tacksmen took tacks not in respect of their heirs, but only in respect of themselves; and seeing that the minds of the taker and giver of such tacks were not but that the said pursuer should be provided of a tack during his own life-time, the heir ought to warrant the said tack to the pursuer presently in the pursuer's life-time, according to the mind of his father, who could mean no other thing at the setting thereof but that the pursuer should be sure and provided of a tack for his life-time; and if the pursuer should not have present warrandice, he may decease

Tacks sleep during the ward; but the tacksmen is entitled to have the time he loses afterwards made up to him.