No 10.

it was the heir, who acquired the forefaultry, who, albeit he might be holden to warrant, as is alleged, (which he also denied) yet thereby there could be no superveniency to make a real right revive, which once was extinguished; albeit that superveniency had been in the person of him who first disponed the lands, it might have been probably alleged, that the superveniency was real, but not so in his heir, against whom there can be no ground, but a pretence of warrandice; and it being also *alleged*, that the heir could not be holden to warrant, because in such cases there could be no warrandice for the forefaultry of the superior, and it is against law, to extend warrandice thereto; and the pursuer *answering*, that he is expressly obliged to warrant *contra omnes mortales*; and it being also questioned, if this ought to be imputed as a fault of the buyer, that he sought not confirmation of his own right, to have thereby saved it from the superior's forefaultry, or if it was the fault of his author, who was obliged to warrant, and who, in respect that he was subject to warrant, ought to have foreseen the hazard of forefaultry, and so that it was his fault, the not confirmation;—THE LORDS found, notwithstanding of all that was alleged in the contrary, by the defender, that the purchasing of the lands foresaid was a conquest, and that the wife ought to have the liferent thereof; and that the forefaultry did not derogate, but that it was a conquest, seeing the right thereof was devolved in his person, who was holden to warrant, who so having the right, could not obtrude the same against that right, which he was holden to warrant; so that albeit it might be questioned, whether there should be warrandice against a forefaultry of the superiors, yet seeing that right of forefaultry was become in the person of the heir of him who sold the lands, that heir could no more object that forefaultry, inherent in his own person, against his own vassal, than the first seller might have done; so that albeit a third party might have evicted the lands, by reason of the forefaultry from Gray, *quo casu* the warrandice against Murdistoun had been more disputable, yet being in Murdistoun's own person, it was found, he could not thereby distress his said vassal; seeing in effect it was *factum suum*, from which he could make no pretext to eschew warrandice; and therefore the purchasing thereafter of Gray's right from him, by an express emption, was found conquest, as said is.

Act. *Nicolson*. Alt. *Advocatus & Stuart*. Clerk, *Gibson*.

Fol. Dic. v. 1. p. 514. Durie, p. 803.

1665. *February* 15. BOYD of PINKHILL *against* TENANTS of Cairsluith.

No 11.

PINKHILL, as donatar to the ward of Cairsluith, pursues removing against the tenants, whose master compears, and *alleges*, That the gift was to the behoof of the minor, his superior; who, as representing his father and godsir, was obliged, in absolute warrandice against wards *per expressum*.

No 11.

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. 1. *p.* 514. *Stair, v.* 1. *p.* 270.

1668. *January* 8. FORBES *against* INNES.

No 12.

A WIFE being taken consenter 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. 1. *p.* 514. *Dirleton. Stair.*

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

1675. *December* 22. TOWN of MUSSELBURGH *against* SCOT.

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.

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 declararor of non-entry thereof against the said Adam, who *alleged* absolvitor, 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 *duplied* for the defenders, That *jus superveniens auctoris accrescit successori*; and therefore the supervening right to the town, must accresce to the defender. It was *triplied*, 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 *quadruplied*, That here there was no necessary act, because there was no charge of horning, nor suspension.