

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.

- No. 3. before the end of the ward, and so he should be defrauded of a tack during his own life-time, against the contractors' minds. The Lords ordained the pursuer or his heir to have so many years tack after the forthcoming of the ward as the pursuer should want by the ward; but would not decern warrandice present with effect, because there was no special permission of warrandice from ward in the said assedation, which if it had been, they would have enforced present warrandice during the pursuer's own life-time.

Maitland MS. pp. 228, 229.

1677. December 17. LORD GLENBERVIE against _____.

No. 4.
In conformity
with No. 1.

The Laird of Glenbervie, who being made donatar to the ward of certain lands, pursued for the proceeds of the same. Compeared a gentlewoman, and alleged, That her terce, into the which she was served, being a part of the said lands, could not come nor fall in ward. The which the Lords found relevant, according to the law of the Majesty, *de dominarum tertia*.

Colvil MS. p. 260.

1505. February 6. The KING against SCHIR JOHNE HAY.

No. 5.

All landis halding of the King, utherwayis nor in fré burgage, ar haldin in blanche ferm, or in few ferm, or be service of ward and relief, or in name of pure and fré almonis. *De quatuor mod. ten. ter. de Rege*.

Item, Landis haldin be ony man, of ony superior or over-lord, *reddendo servitia debita et consueta*, the samin is understuid to be halden be service of ward and relief, except in his infestment relation be maid *ad formam et tenorem antiquæ cartæ*; for in this cais the manner of halding of the saidis landis sould be reulit and understuid, conform to the halding contenit in the auld chartour, gif ony be.

Balfour, (HOLDINGS) p. 477.

1610. February 7.

A. against B.

No. 6.
Lands paying
*sex denarios
argenti nomine
canæ* were in-
terpreted to
be ward.

Lands paying *sex denarios argenti nomine canæ* interpreted to be holden ward, in the lands of Knowlquhair, as was alleged in a consultation had by Mr. William Oliphant with the Bishop of St. Andrew's for entering my Lord Lindsay to his lands of Struther, holden in that manner; likeas the Bishop affirmed that his register contained an infestment of the lands of Lambielethane, given seven or eight score years since to one Lambie, from whom James Wade and the goodman of Neilston's right of the said lands proceed, the *reddendo* whereof is *nomine canæ*, and the marriage of the heir taxed to the said infestment.

Haddington MS. No. 1794.