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. 2*do*, 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.

No 13. THE LORDS found that the receiving of the defender was a necessary act of obedience upon the apprising, albeit there was no charge, and found that the supervenient right did not accresce to the defender, unless he had paid a year's rent of composition to the pursuers.

Fol. Dic. v. 1. *p.* 514. *Stair, v.* 2. *p.* 390.

*** Gosford reports this case:

THERE being a declarator of nonentry pursued at the instance of the town of Musselburgh, as superiors of their mills, against Adam Scot, for the bygone duties, it was *alleged* absolvitor, because the defender was entered vassal by the pursuers. It was *replied*, That the time of the entry, the pursuers having only right to two of the said mills as superiors, and since having acquired from the Duke of Lauderdale the superiority of the other mill, who then had the only right thereto, any charter granted by them could not prejudge them of the non-entries of that mill, because it was only granted in obedience of a charge of horning at the defender's instance, who had comprised the same from the vassal, which not being a voluntary deed, but to free themselves from the extremity of horning, they coming in the place of the true superior, who was never charged, cannot be prejudged of the non-entries. It was *replied*, That that charter being granted by the town of Musselburgh, must be reputed a voluntary deed, it being in their power to have suspended the charge; and they having acquired thereafter the right of superiority, can never quarrel their own charter, seeing *jure accretionis* the defenders right of vassalage can never be quarrelled by his authors who granted the charter. THE LORDS having considered this case, did find that the charter bearing expressly that it was granted in obedience of a charge of horning, could not be reputed a voluntary deed, and that it could only be interpreted *cum periculo petentis*, unless the defender could allege that he paid a composition when he obtained the same, not only with respect to the mills, but likewise of that mill whereof they acquired the right of superiority, from the Duke of Lauderdale; so that they being singular successors as to that mill whereof they had no right standing in their persons the time of their charge, and when they granted a charter in obedience, they could not be thereby prejudged of the benefit of non-entries, which undoubtedly would have belonged to their authors, unless they had received composition, which could only put them in the case of a voluntary deed, and give the vassal ground to plead that he had *jus accretionis*.

Gosford, MS. No 828. *p.* 522.