

ACCESSORIUM SEQUITUR PRINCIPALE.

1541. *March 2.*

GOURLAY against SPENCE.

VIOLET GOURLAY, by reason of conjunct fee, claimed and intented her action against Mr John Spence, for the wrongous occupation of certain lands. The said Mr John alleged, that he did no wrong; because he had the ward thereof, by assignation of the same, made to him by Mr Alexander Brown, Chanter of Murray, donator thereof to the King.—The other party *replied*: That the lands were given to her husband, and his heirs of fee, but ward; and when the same happened, the wardatar should have but 40d.; and therefore he, by reason of the ward, ought to have no more to shew, where the lands were so holden of the King, as said is.—It was *duplicated*: That she was neither the man principal, nor yet heir to him; and therefore, that the King's privilege could not help her.—He *triplied*: That she was in the heir's place, by reason of her conjunct fee; and that therefore the privilege given to the heir, should be extended to her.—And therefore the LORDS decerned, that the wardatar should have action; but, while allenary to 40d, conform to the said woman's goodman's infestment of the tenor foresaid.

Fol. Dic. v. 1. p. 1. Sinclair, M.M.S. p. 30.

1623. *March 26.*

FINLASON & DONALDSON against The SHERIFF of EDINBURGH.

MR JOHN FINLASON obtains decret before the Sheriff of Edinburgh, dividing his lands of Killeith, from the lands pertaining to the L. Rollin; and appointing marches to be set by the sheriff, betwixt the said lands. The heritable right of the said lands, being thereafter disponed to James Donaldson and Gilbert Kirkwood, they, and the said Mr John, obtainer of the sentence, charge the sheriff to in-put the march-stone, conform to the decret; which being suspended, Mr John Finlason was debarred with horning; and the said James Donaldson and Gilbert Kirkwood, craving execution at their instance, as succeeding to the right of the lands, by their heritable infestment, and who, consequently, had the benefit of that sentence competent to them, *hoc ipso*, that they were heritors of the lands.—THE LORDS found, that no execution could pass at their instance, upon the said decret, except they had been, *per expressum*, made assignees thereto; or else, that they had obtained the same first transferred in their persons, without

No 1.

A ward being taxed at a small sum, in favour of a man and his heirs, the privilege was extended to a conjunct fiar, though there was no mention of her in the infestment granted to her husband.

No 2.

Execution at the instance of a singular successor, upon a decree of division of lands, which had not been specially assigned, found to be incompetent.