

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 allenarly 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.

No 2. which they could not seek these charges, or summar execution, upon that sentence. See July 25. 1626. JAMES STUART, (*No 3. b. t.*) and March 25. 1623. L. HUNTHILL.*

A&. King.

Alt. Foulis.

Clerk, Gibson.

Durie, p. 62.

1626. July 25. STUART *against* BREWERS in GLASGOW.

No 3.

A decree, declaring a right to brew within certain limits, found to constitute a real right, and to follow the ground, without being specially assigned.

IN an action, at the instance of James Stuart, burghers of Glasgow, against certain brewers in the barony of Glasgow, to have it found, that the right and privilege of brewing, within the particular bounds libelled, pertained only to him; as being infest in a part of the lands of that barony, with the only privilege of brewing, within these bounds libelled; and therefore, all others to be discharged from brewing within the same lands and bounds.—THE LORDS found, that the right of the decreets, recovered by certain persons, who had right to the said lands and privileges, before the pursuer; whereby the said privilege was found to pertain to them by these sentences; did belong to this pursuer, as successor to them in the right of the said lands and privileges; the same privileges being real, which followed the ground; which right, so found by the saids preceding sentences, the LORDS found was competent; and did militate in this pursuer's favours; who was infest with the said privilege, to furnish him a title to pursue this delarator, and action libelled at his instance; albeit he was not specially made assignee to the decreets, but that he used the same as a title to sustain this action. See March 25. 1623. L. HUNTHILL, (in note to *No 2. b. t.*)—March 26. 1623. DONALDSON, (*No 2. b. t.*)—December 1. 1630. FEWERS of Chappelton, (See LEGAL DILIGENCE.)—March 1. 1636. GUTHRIE, (See SUMMAR PROCESS.—SUSPENSION.—THIRLAGE.

Fol. Dic. v. 1. p. 2. Durie, p. 226.

* The case here referred to, L. Hunthill against Rutherford, 25th March 1623, which is reported by Durie page 61, in a manner so singularly indistinct, that, for the sake of perspicuity, it will be necessary to have recourse to the alphabet in stating it; was to this effect.

Lands having fallen to A. by recognition, he was infest, and obtained decret of removing against B. the tenant. Thereafter A. conveyed to C., who was infest by resignation. C. pursued an action of *succeeding in the vice* against D., who had entered to the possession of B.—D. alleged C.'s conveyance and sasine, were not sufficient to give him either right to the lands, or a title to infest in this action; because they depended on the right of recognition of C.'s author, of which no declarator had been obtained; therefore the same, and all other subaltern rights depending upon it, were insufficient. This plea was repelled 'in respect of the decret of removing obtained, as said is by the pursuer's author, and of the pursuer's right, proceeding upon resignation of his author, concerning the validity whereof, the pursuer could not, in this judgment of succeeding in the vice, be compelled to dispute.'