

roboration of an heritable security ; and so, as an accessory, *debet sequi naturam principalis*, and not turn moveable but by a requisition, which they cannot show.

Notwithstanding of all which pregnant qualifications of his *propositum et animus*, they found the sum, as moveable, to belong to the sisters, who were executors.

This was judged hard ; only Gairleton had the misfortune to be generally ill-loved, and the ladies found favour with my Lord Chancellor, who is an enemy to none of that sex if they be handsome.

Then Gairleton offered to improve the executions of the charge of horning, hoping that it might be found that the messenger had not two witnesses with him at the time he gave it.

*Advocates' MS. No. 349, folio 136.*

1672. *January 25, and June 26.* THE EARL OF QUEENSBERRY *against* The DUKE OF BUCCLEUCH.

*January 25.* SCOT of Newton, Chamberlain, holding some lands ward of the Earl of Queensberry, and others likewise ward of the Duke of Buccleuch, and the marriage existing, it fell to be debated which of the two was the oldest superior, to whom in law the marriage will be due. It was not controverted but before the Earl of Bothwell's forfeiture he was the oldest superior ; but the question ran on this :—Bothwell was forfeited ; and because this gentleman was not confirmed *quoad* that land he held of him, his land fell also under the compass of the forfeiture. Buccleuch gets the gift of Bothwell's forfeiture, as also of this gentleman, who giving him back his lands, retained the superiority ; whereon it was alleged that though the *feudum* held of old of Bothwell, and *eo nomine* he was the oldest superior ; yet the *feudum antiquum* was extinguished by the forfeiture, and the new gift from his Majesty, or Buccleuch, was *novum feudum*, and to be reckoned allenary from the date of the new charter, and so Drumlanrick was now the oldest superior.

This cause was well reasoned and illustrated from many similes taken out of the feudal law ; which see in the informations beside me. *De questione, an feudum post feloniam commissam restitutum be novum or antiquum, vide Matthæum de Afflictis, ad rubricam 14, libri 2 Feudorum, No. 7, p. 327.*

*Advocates' MS. No. 312, folio 127.*

*June 26.* THE Lords coming to advise the process marked *supra*, about Chamberlain Newton's marriage, at No. 312, they found, if seisine had followed upon that charter mentioned in the informations, then that the marriage would have belonged to Bothwell, as to the oldest superior ; but since the vassal had not made use of that right, but taken a new one, which made it *novum feudum* in his person, and possessed by it, they found Queensberry the oldest superior, and therefore adjudged the casualty of the marriage to him.

*Advocates' MS. No. 350, folio 136.*