

deed to another. There certainly seems much difficulty in maintaining, that even in a court of equity, and independently of the previous unsuccessful proceeding at law, a party can, after transferring his right to the principal, recover the accessory.

In the case of *Norton vs. Tucker*, 1 *Atk.*, 525, it was decided, that a bill for an account of the rents and profits was improper and premature, until the possession of the property was recovered, and that the proceeding in equity was the same as at law, where trespass would not lie for mesne profits, till possession was recovered by ejectment. Now, if this is the rule, and a bill for the rents and profits would be premature, until the dower itself was recovered, assuming the plaintiff not to have parted with her title thereto, it is not easily seen how her condition is improved by the circumstance of her having deprived herself of the capacity to recover it. If the title to the principal thing must be successfully asserted, before the incident can be claimed, it is immaterial whether the failure to do the former is the result of neglect, or of some act by which the party is precluded from setting up the demand. It is enough that an indispensable preliminary act has not been performed.

In this case it will be found, that the answer of the defendant does not admit the seisin of the husband at his death, and, perhaps, if that were a question, it might be necessary to send it to a court of law for determination. But an action could not now be maintained in a court of law for that purpose, because the complainant, by her deed, has unquestionably stripped herself of all title to dower in the land; and, therefore, it follows, that under this bill, which does not claim dower, but only rents and profits, the court must decide upon the right of the complainant to dower.

There is a manifest propriety in the principle which requires that the title to the land itself shall be first vindicated, before a claim for the fruits can be admitted; as otherwise, in a proceeding which involves nothing more than the claim for the accessory, the court would find itself engaged in determining upon the right to the principal. Surely, if the title to principal and accessory are not decided at the same time, but are pre-