

It was alleged that, by the Mutiny Act, § 64, the Lords had sufficient jurisdiction to try matters of this sort ; but then it appeared that it could not be in the way of a summary complaint, but of action. They refused therefore the complaint.

Action for damages was accordingly brought, which is still in dependence.

In complaints against messengers for malversation in office, it is competent, by summary application, to complain not only against the messenger but against their cautioners.

See Books of Sederunt, *Forbes against Grant*.

SUPERIOR AND VASSAL.

1774. August 5. HAMILTON of PROVANHALL *against* MAGISTRATES of GLASGOW.

A RIGHT of superiority cannot be divided without the vassal's consent ; see Ersk., p. 183, 547. See, observed by Stair, 30th January 1671, *Douglas* ; 26th November 1672, *E. Argyle* ; 30th July 1678, *Lady Luss* ; same by Fount., 14th June 1678 ; — 9th June 1741, *Maxwell against M' Millan*, observed by Home, and 111 *New Coll.*, 51. But if the lands were contained in two or more different charters, though holding of the same superior, the superior may sell the superiorities to as many different persons without the vassal's consent. This is not to multiply superiors, but to continue them. So the Lords found, 5th August 1774, *Hamilton of Provanhall against Magistrates of Glasgow*. Lord Kaimes, Ordinary, had found so. The Lords refused a petition without answers.

1763. November 15. The D. of BUCCLEUGH *against* The INHABITANTS of DALKEITH.

THE Duke of Buccleugh, Baron of Dalkeith, infest *cum brueriis*, pursued certain of the inhabitants for importing ale into the barony, contrary to regulations made by his baron courts. "The Lords found, That, in respect the suspenders, and their authors, were feuars of the barony before the year 1673, when the regulations against importing ale into the barony were made, therefore, that these regulations were not binding upon the suspenders ; and suspended the letters *simpliciter*."

A decision had been pronounced, 27th February 1762, to the same effect, and on the same principles, *Orrock* against *Bennet*, &c., and extending it to tacksmen who had prior tacks.

1776. December 14. CHRISTIE, Petitioner for a Warrant from Chancery for Infestment by the Crown.—*Supplendo Vices*.

THE estate of Elphinstone was sold by the late Lord Elphinstone to certain trustees for Lord Dunmore, who expedite no public infestment, but were infest base upon the precept. A vassal of the estate, having served himself heir in special to his predecessor, was desirous to complete his title by infestment. But finding the trustees not infest public, he raised against them a special charge, in terms of the Act 1474, c. 58, and a summons of tinsel of the superiority; in which he called the trustees and officers of state, the Crown being next superior; and having obtained decret *in foro*, finding, That Lord Dunmore's trustees had forfeited the superiority for life, and that he was entitled to hold of his next immediate superior, the Crown, he applied to the Chancery for a precept for that purpose, directed to the Sheriff, for infesting him. The Chancery demurred, without a warrant on a bill to the Ordinary on the Bills authorising them to issue such precept. He applied therefore by bill, 14th November 1776. The Lord Alva, Ordinary on the Bills, having reported it, the Lords ordered the point to be stated in a memorial. At first view there appeared a defect in the decret of tinsel of the superiority; for, as Lord Dunmore's trustees never were infest public, the application for the infestment to the heir of the vassals ought to have been made to Lord Elphinstone, with whose heir the feudal right of the superiority still remained. They ordered this point particularly to be stated in a memorial; and, on advising the memorial for Christie, *ex parte*, they refused the warrant. They were of opinion that the Act 1474 did not apply to singular successors, but to the heirs of the former superiors; and, although Mr Erskine seems ambiguous upon that point, see Inst., p. 585, yet Sir Thomas Hope was clear, see M. P. p. 208. They differed as to the effect of the base infestment: Some thought it gave a title to the superiority, if the vassal consented that a superior should be interposed. Lord Braxfield said he thought it gave no title. And, therefore, as Lord Elphinstone's heir was not proceeded against, nor party to the declarator of tinsel, that the warrant fell to be refused.

1777. January 24. SIR LAURENCE DUNDAS *against* The HERITORS of ORKNEY.

IN the question betwixt Sir Laurence Dundas and the Heritors of Orkney, 10th August 1776,—Sir Laurence, *inter alia*, contended, that, in virtue of the grants of Orkney and Zetland, by the Crown, to the Earls of Morton, and