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*** Auchinleck reports the same case:

1633. *Feb.* 19.—JOHN LENOX of Kelly, superior of the lands of Kirk ——, pursues the feuers to hear and see their feus reduced for not payment of their feu-duties, resting unpaid for the space of two years, conform to the act of Parliament, which feu-duties were resting unpaid for 40 years. It was *alleged*, 1*mo*, That the defenders were minors, and a minor *non tenet placitare de hæreditate*. To which it was *answered*, That this only admits an exception (*nisi in dolo paterno*). 2*do*, This rule has no place against the said act of Parliament, wherein minors are not excepted. THE LORDS repelled the allegeance upon minority. It was further *alleged*, That seeing there was an irritant clause contained in the defender's infeftment, whereby it was provided, that in case of not payment of the feu-duty, the superior should have liberty to poind for the duties, so the most that can be craved is the double of the feu-duty. To which it was *replied*, That the pursuer has it in his option, either to pursue upon the act of Parliament, or upon the clause contained in the feuer's charter, seeing the charter is prior to the act of Parliament. THE LORDS found that the pursuer may either use the benefit of the act of Parliament or clause.

Auchinleck, MS. p. 82.

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After a decree-arbitral had been pronounced on a submission, the parties of new submitted the matter. Neither party expressly renounced the former decree, and the last submission expired before decree was pronounced. The former decree was found to be still valid.

1634. *March* 22. L. HARTWOODMIRES *against* TURNBULL.

A SUBMISSION being made betwixt these parties to arbitrators, anent either of their rights of the lands of Philiphaugh and Hadden, the Judges decerned Turnbull to dispone to Hartwoodmires, with consent of Turnbull his son, his right of the said lands heritably, and Hartwoodmires to pay therefor to Turnbull 7000 merks; whereupon Turnbull being charged, he suspends, that the decreet is null, being *ultra vires compromissi*, seeing he had submitted all his right that he had to the lands, and took no burden for his son, so that the Judges had no power to decern him to dispone with consent of his son, but his own right only. THE LORDS found this reason noways sufficient, but sustained the decreet, seeing it was a base fee, which the son had acquired from the father, which right coming to the arbitrator's knowledge, after the submission, they shewed to the suspender, that they behoved to decern him to obtain his son's consent to that disposition of the land, without which he could not have a perfect right, whereunto the suspender acquiesced, and was content therewith, and which the charger offered to prove by the declaration of the arbitrators. The LORDS sustained the same to be so proved, for they found it unjust, that the heritable right of the lands should subsist in the son's person, and that the father should receive from the charger, as the decreet-arbitral appointed,

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7000 merks, which was reputed to be a competent price for the full right of the lands. It being thereafter *alleged*, That the charger had past from the said decreet, in so far as, since the date thereof, he had of new again submitted his right of these lands to the arbitrators, whereby he could never clothe himself with that sentence, nor return thereto; this allegeance was repelled, seeing nothing had followed upon the new submission, nor no sentence given thereon; for the LORDS found, that the submission being expired, and nothing done thereon, and the charger never expressly renouncing his former decreet in the submission, he was not thereby prejudged in the said sentence, but the same stood in its own force, and so the decreet was sustained, and found not *ultra vires*.

Act. *Stuart*. Alt. ———. Clerk, *Gibson*.

Fol. Dic. v. 1. *p.* 434. *Durie, p.* 716.

1687. *July*. KERR of Littledean *against* LAW.

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Found, that a superior, having purchased from his vassal, could not allege that recognition was thereby incurred.

JOHN HAITLIE having granted a wadset of the lands of Dunsyre, which he held ward of Andrew Kerr of Littledean, to Sir Alexander Don, and Littledean having pursued a declarator of recognition against Janet Law, relict of Andrew Simson, who had comprised the lands from Haitlie; *alleged* for the defender, That the recognition was not inferred by the wadset, because it was an improper wadset, affected with a back-tack, and the back-tack duty was far within the half of the rents of the lands; and seeing the reason of the feudal law upon which recognition is inferred is, that by the alienation the vassal is not in a condition to perform the services he ought to the superior, which is understood to be when the greatest part of the feu is alienated and the rents thereof exhausted, so that it necessarily follows, that any alienation by which the greatest part of the rent is not exhausted, does not infer recognition; and as an infeftment of annualrent, albeit out of the hail ward tenement, will not infer recognition, if the annualrent do not exceed the rent of the half of the land, so neither an improper wadset, which upon the matter has but the effect of an infeftment of annualrent, seeing the back-tack restricts the right to the annualrents of the sum contained in the wadset; and in recognitions, the nature of the right as to transmissions of the fee of the lands is not so much considered as the effect of the right, if it exhaust the greatest part of the rent or not; and it is upon that ground that in liferent infeftments and infeftments of relief and warrandice, albeit of the whole ward tenement, yet as to the inferring recognition, the value of the liferent, and the hazard of the warrandice and relief is only considered; as was decided 7th July 1681, Hay against the Creditors of Muirie, (See No 62. p. 6470 :) And if a