

as such he fell debtor to him in a balance of money, and came to be possess of his most valuable writs. He was pursued by Mr Hay's son, his father having died, for payment of the one and restitution of the other; and decret having been obtained, and diligence done, he was incarcerated in the prison of Innerkeithing. Taylor delivered part of these writs to Mr Hardie, his doer, to be restored to Mr Hay; but still, there being delays, Mr Hay gave in a summary complaint, praying that Mr Hardie might be ordered to deliver up such of his writs as he was possessed of upon inventory and receipt; that Taylor might depone whether he had any other, and, if he had, might be ordered to deliver them up; and, in short, that the Lords would grant him such relief, in the premises, as they should think proper.

Hardie appeared, and offered to deliver up all the writings in his hands; which the Lords ordered. But, as to Taylor, they ordered the complaint to be served: they ordered him to answer within 48 hours after service: and, in order that he might be at hand to be examined, they granted warrant for transmitting him from the prison of Innerkeithing to the prison of Edinburgh, there to remain till further order of Court.

In a case such as this, where the ordinary compulsitors of the law seemed ineffectual, and where a person, an agent in the Court, obstinately persisted in keeping possession of his client's papers, notwithstanding of a decret *in foro*, decerning him to deliver them up, the Lords seemed determined to apply some extraordinary remedy to enforce obedience to their authority, and to redress the party.

1777. August 9. DUNCAN BUCHANAN *against* CAPTAIN M'DONALD.

DUNCAN Buchanan, land-labourer, was taken up at Glasgow, by a party of the 71st regiment, as a deserter; they alleged that he had been enlisted at Perth, under the name of John Campbell, and had afterwards changed his name, and deserted. This Buchanan absolutely denied, insisting that, during the time condescended on when he should have enlisted, he had resided constantly at Stirling, attending a school there, and that he had never changed his name. Finding himself, however, unsupported, and hardily used in prison, he appeared before a magistrate, acknowledged the fact alleged, and engaged to attend the regiment.

Afterwards, however, having received encouragement to stand to his innocence, he preferred a complaint to the provost of Glasgow, insisting on the truth of his story, first above mentioned, and prayed to be liberate; and, in the course of this complaint, proofs were led of the identity of his person, amazingly contradictory. The provost being ready to pronounce judgment, Captain M'Donald, the officer against whom the complaint had been served, presented an advocacy, which was passed and signeted, and the discussion put over till next winter; whereupon Buchanan presented a bill of suspension and liberation, which was intimated to M'Donald, and, at the same time, presented a summary complaint to the Court for damages.

The Lords refused it as incompetent.—9th August 1777.

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*."