

to receive vassals: and therefore the common acts which they do under that reduplication as such, can never prejudice them of any rights that are competent to them as creditors or otherwise. And thus, lately, in the case betwixt my Lord Torphichen and Ja. Maison, younger, the Lords found Torphichen, as a creditor, had interest to reduce Maison's right and infestment, though granted by himself as superior. And really the same is most just and consonant to law, by which *actus agentium non operantur ultra eorum intentionem*. And where a superior granted charter of an irredeemable right, without mentioning the right of reversion he then had, it was found not to prejudice his right of reversion; as *Dury* marks, 20th March, 1635, *Bishop of Glasgow against Mauld*.

I heard not if this was decided; but I think it ought not to hinder my Lord Forbes from quarrelling the eke, that he had confirmed the wadset.

Advocates' MS. No. 416, folio 224.

1673. July. The LORD LYON *against* ALEXANDER FORBES, of Auchintoull.

MY Lord Lyon pursuing declarator upon a gift of recognition of the lands of Auchintoull; ALLEGED, the right made by Alexander Forbes to Ja., his son, of these lands, can infer no recognition; because it is to his apparent heir, and who is *alioqui successurus*. 2do, For the base infestments granted by Ja. to sundry persons, far beyond the worth of the lands, neither can they infer recognition; because only granted by Ja., who was never the king's vassal, but was infest base holden of his father.

ANSWERED,—Though the infestment given by the father to the son can be no ground of recognition, yet those made by the son must be as good a ground for it as if they had been made by the father, who is the King's immediate vassal, to strangers; because the fee goes, by this, *extra familiam vassalli*, and the vassal becomes unable, in construction of law, to serve the superior: else a compendious way shall be laid for frustrating all recognitions; the father shall infest his son base, and he shall alienate without acknowledging the superior: which were most absurd; for the superior's interest shall be evacuated, himself contemned, and the vassal disabled to perform the services prestable by him to the superior: and it should be all one to the superior whether the fee be transmitted immediately to strangers by the vassal, or first to his son, and then by him to strangers; contrary to the solid and just maxims of law, *Quod directo non licet, nec per ambages fieri potest*. This is a pretty question.*

Advocates' MS. No. 417, folio 224.

1673. July.

A CAPER having rescued a Scots merchant ship which had been seized on by some Dutch caper, it fell to be questioned, whether or no, *jure postliminii quod obtinet*

* In July 1674, the Lords found the alienations made by the son, though he was only infest base, were a ground of recognition.