

none appeared for him before the inquest. Yet services have been reduced in Scotland, on that reason, that there was a nearer on life; *ergo*, inquests have not scrupled in such cases to retour. But the most rational way, in such a case, were to give in a bill to the Lords of Session, representing the matter of fact, and craving a factory or other warrant from them, as *curator bonis*, to intromit and call others to account *ne res medio tempore pereunt*; upon caution to restore if the brother shall compear and claim his right. *Advocates' MS. No. 650, § 2, folio 305.*

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ANENT CONSOLIDATING SUPERIORITY AND PROPERTY.

1677, November 8.—Where a vassal holds of a subject, and buys the superiority, to the effect he may hold of the King, or succeeds as heir of line to his vassal, *quæritur*, How the superiority shall be mingled and united with the property, it being the more noble and sovereign right. For consolidating the property with the superiority the way is easy and known, by a resignation *ad perpetuam remanentiam* in the superior's hands; but how the superiority shall descend to be confounded with the property, is not so easy. Sir John Nisbet advised, that the vassal should dispone the property to a confident person; and, being so denuded of the property, that then he who was his superior in these lands should dispone to him the superiority; (but *nudum jus superioritatis* cannot be conveyed alone, being *jus incorporeum, quod nequit per se subsistere*, without the lands be also disposed *cui inhæret*; as was advised by Sir Robert Sinclair in Smeton Hepburne's superiority, who took a disposition of it directly from Sir A. Ramsay, as having right to all the apprisings on the estate of Waughton;) which being done, then the trusted person to retrocess him again to the property, by which the property became an accession only of the superiority. But I see no absurdity in the making the superiority to come to the property, and there were too many *ambages et obliqui cuniculi* in this conveyance. Why may not the superior resign the superiority *ad remanentiam* in the Exchequer's hands, or *in favorem* of the vassal; to the effect it may be extinct, and he may have none interposed betwixt him and the King, but he may immediately hold of his Majesty?

If he be heir to his vassal, *quæritur*, If a special service will consolidate the property, without any more. For, in other cases, if one die specially served without a seasine, the next heir enters not to him, but to him who died last infeft.

*Advocates' MS. No. 650, § 3, folio 305.*

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1677. November 8. The COMMISSARIES OF EDINBURGH *against* The EXECUTORS OF ROBERT HAMILTON.

THE executors or nearest of kin of Robert Hamilton in Newbottle having been charged by the Commissaries of Edinburgh to confirm his testament, they gave in a bill of suspension, on this reason, that he had *inter vivos* made an assignation and disposition of all his moveable goods in favours of ————; and so not being *in bonis defuncti*, but he denuded, they ought not to be confirmed. The Lords repelled, in November, 1677, the reason: both in regard the assignation was not intimated in the lifetime of the cedent, and that it bore a clause empowering the disponer to alter it at his pleasure; and so it was reputed to be but done in defraud of the confirmation, since it was not absolute.

*Advocates' MS. No. 650, § 5, folio 305.*