

1663. *December 8.* JOHN FLOYD and BRIDGET TURNE *against* ANDERSON, and other Tenants to the Duke of LENNOX.

*In anno 1645*, James, Duke of Lennox, binds and obliges him to pay to Mr. David Buchanan the sum of 1000 merks. This bond Mr. David assigns over to Mr. William Buchanane; which Mr. William, by his translation, disposes the same to John Floyd, gentleman in the city of London, and Bridget Turne, relict, and executrix confirmed to the deceased Jo. Turne; and in their name, and his own, as factor, registrates the bond, and thereupon raises letters of horning, poinding, and arrestment, against the Duke's tenants within his barony of Kilmarnock, to pay to him and them their maills, farms, and duties, aye and while he be completely satisfied of the said bond; summons each of them for 1000 merks, less or more. This charge they suspend, because, *1mo*, For null defence, and not compareance, never having been summoned; *2do*, Because charged for 1000 merks the piece, whereas some of them pay not 40 merks Scots; *3tio*, The time of the arrestment, (which was in 1661,) they were not liable in payment of their farms and duties to Charles, now Duke of Lennox, because not then entered heir; but they paid them to Mr. Lo. Cochrane, as factor for the executors of this Duke of Lennox his predecessor, and obtained his discharge thereon, which at the discussing of the suspension they proffer to produce. At the calling of the suspension, there is produced for the charger the bond, with the assignations and translations thereof; *item*, the letters of horning and arrestment, duly executed, raised thereupon. All which, with the reasons of suspension, being ripely considered by the Lords, they find the letters orderly proceeded, aye and while the said tenants make payment of the sums arrested in their hands by the pursuer, as far as will satisfy the debt acclaimed.

*Act.* Sir George Lockhart. *Alt. Suspender,* Sir Thomas Wallace.

*Signet MS. No. 25, folio 9.*

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1663. *December 8.* ALEXANDER BURNET of Carlips, and MARGARET HAY *against* Jo. SCOT, WILLIAM BURNET of Barns, and Captain JOHN VEITCH.

Mr. William Burnet of Barns, as principal, and Captain Jo. Veitch, in Easterdaick, as cautioner, *in anno 1654*, bind and oblige them to repay the sum of 700 merks, borrowed by them from Mr. Alexander Burnet of Carlips, advocate. *In anno 1655* Jo. Scot grants to the same Mr. Alexander his bond for 1000 merks. Mr. Alexander dies in 1657. His eldest son, Alexander Burnet, serves and retours himself heir to his father; then confirms his father's testament, wherein his mother, Margaret Hay, is nominated to him tutrix testamantar; then he nominates sole executor, and universal legatar, and intromitter with his goods and geir; *item*, therein are contained the foresaid bonds and debts. Thus, having acquired a right, he, and his mother as tutrix, pursue the said persons for payment-making to them of the said sums of money. For instructing of the summons, there are produced the extracts of the said three registered bonds;

then an extract of his service, or retour, out of O. S. L. Chancellary, under the subscription of Jo. Acheson, Depute to Sir William Ker of Hadden, Director to the Chancellary; then his father's confirmed testament, under the subscription of Mr. Alexander Swinton, clerk to the commissariot of Edinburgh. Compears Mr. George Norvell, for Mr. William Burnet and Captain Veitch, and then passes from his compearance. Compears Jo. Scott, by his procurator, and alleges that he ought to be assoilyied from the points of the said summons, because he offered him to prove that the sum libelled against him was assigned by the pursuer's father to Sir Michael Nesmith of Posso, and his assignation intimated to the said defender; and that, accordingly, he had made payment thereof to Posso.

Which allegiance the Lords found relevant, and assigned a day for proving the same: at the coming of which, because he failiyied therein, the term was circumduced against him, and decret given, as also against all the rest, ordaining them to make payment of the said sums to the pursuer.

*Act.* Mr. Robert Hay. *Alt.* Mr. Robert Sinclair.

*Signet MS. No. 26, folio 9.*

1663. *December 9.* JO. BOYDE *against* MAJOR GEORGE BRUCE.

MAJOR GEORGE BRUCE, son to Bruce of Clackmannan, by his bond, (which proceeded on some previous transactions anent warranting to the said Major the lands of Clackmannan, and for recovering to him such writs as might concern him for his security of the said lands; *item*, for making over to him a right of a comprising led against the said lands,) obliges him to pay 700 merks to Robert Younger, in Clackmannan, who assigns the same to Jo. Boyde, merchant in Edinburgh; but so that they should charge conjunctly. They having put the bond in the register, and got out letters of horning against him, he suspends, because, *1mo*, The causes above rehearsed, of the granting the said bond, are not fulfilled to the suspender. *2do*, The same money, before Jo. Boyde's assignation was intimated, was arrested in his hands at the instance of Robert Younger's creditors, which must be purged ere he can answer this pursuer. *3tio*, The said charge is altogether general; charging the suspender to make payment to Jo. Boyde of as much as shall be found resting to the said Jo. after count and reckoning made betwixt him and Robert Younger; and whatsoever shall be more, it must be countable, therefore, to Robert Younger.

Notwithstanding thir reasons, at the calling of the suspension the Lords found the letters orderly proceeded, aye and while the Major should make payment to the pursuers of the said sum of 700 merks; yet withal decerned, that how soon he should do that, that then Jo. Boyde should be holden to assign and dispone to the Major the comprising led at his instance, for this and other sums, against Robert Younger, of the tenements and acres lying in and about Clackmannan; without prejudice to the said Jo. Boyde, his comprising the said lands for other sums of money yet resting owing, unpaid.

*Act. Charger*, Mr. David Thoirs. *Alt.* Sir Andrew Dick, Mrs. Lawrence Oliphant, and Jo. Colvill.

*Signet MS. No. 27, folio 9.*