

offered to prove thus :—by the charger's oath they would prove that the translation was to Isobel's behoof; by his cedent's oath, that this pursuit is to her behoof; and to her own oath the truth *exceptionis non numeratæ pecuniæ*: but now the said Isobel (in whose oath the foresaid reason would ultimately have terminated for proving thereof) is dead, so that the supplicant is prevented in the probation of his foresaid reason by her said oath; therefore beseeches the Lords they would ordain the charger, and his cedent, to depone anent that reason; to whose oath he now referred the same *simpliciter*; to wit, whether or no, to their certain knowledge, the one half of the said principal sum was only delivered at the subscribing of the bond charged upon. *Item*, Craved the letters might be suspended to eight years' annual rent, conform to the Act of Parliament made in favours of forefaulted persons, (such as the Lord Spinie was,) and their cautioners.

Upon reading of this supplication, the Lords caused call the charger's procurators to hear what they had to say against it, who alleged that the foresaid desire could not be granted, seeing an act of litiscontestation was already extracted, and the cedent had deponed already; yet of consent were content to admit the reason above written as relevant, *cum onere maximarum impensarum*, providing there be no farther suspension plead in this matter. Whereupon they being examined upon oath, deponed *negativè*, that for any thing they know their sister did pay the whole sum now charged for, to my Lord Spinie. In respect of which deposition, not proving the reason that was referred thereto, the Lords found the letters orderly proceeded, aye and while they were obeyed; suspended them for eight years' annual rent; and found the arrestment sufficiently purged.

*Suspender*, Mr. George M'Kenzie. *Alt.* Mr. Robert Sinclair, Sir George Lockhart.

*Signet MS. No. 76, folio 29.*

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1664. *January 16.* GEORGE JOHNSTON *against* JAMES TWEDIE and  
WALTER TWEDIE.

*IN anno 1656*, James Twedie in Hairston, as principal, and Walter Twedie, his cautioner, by their bond of corroboration, obliges them to pay to Geo. Johnston in Carryserane, the sum of 800 merks. This bond he registrates, and thereon charges them with horning; which charge they suspend, because the charger, by his ticket or discharge in 1657, granted him to have received payment of 300 merks, in part of the foresaid principal sum of 800 merks; and that by accepting a bond of 300 merks, wherein Jo. Grege obliged him to pay to Ja. Twedie, or his, the sum of 300 merks, which the said Ja. assigned him to. Then again, the same charger, by his other ticket in 1659, grants him to have received from the suspender the sum of L.187, also in part of payment of the foresaid principal sum contained in the said bond of corroboration; and therefore discharged him thereof, *pro tanto*. And for the remainder of the aforesaid principal sum, they had truly paid the same, conform to precepts drawn upon them by the charger; which they referred to his oath of verity. *Igitur*, this charge being for the said whole sum of 800 merks, ought to be suspended.

At the calling of this suspension, there is produced for the suspenders the said two discharges, together with another, whereby the charger grants him to have

received L.66, and that in contentation of his annual rents owing him for the said sum by Ja. Twedie. For the charger there is produced the bond of corroboration, with the letters of horning and executions thereof; and alleged by them that the discharges produced ought not be respected to infer any liberation from the said charge *pro tanto*, because they discharged sums above L.100; and, not being holograph, are not subscribed by four witnesses.

In respect of which allegiance, the Lords would have no respect to the said discharges: whereupon the suspenders were content to refer the truth of the payment contained in the said discharges to the charger's oath of verity *simpliciter*. For which effect a day having been taken to produce him, he deponed he had indeed received L.387 in part of payment of the foresaid principal sum of 800 merks, but no more. In regard of which deposition, the Lords suspended the letters as to the said L.387; and found them orderly proceeded as to the rest.

*Act. Suspenders*, Sir Thomas Wallace. *Alt.* Mr. David Dinmuire.

*Signet MS. No. 77, folio 30.*

1664. *January 16.* Sir DAVID SIBBALD of Rankeillor *against* Sir ANDREW BRUCE of Earleshall, and ANDREW BRUCE, his Son.

SIR ANDREW BRUCE of Earleshall, and Andrew Bruce fiar thereof, his son, by their bond in 1659, oblige them to pay to Sir David Sibbald of Rankeillor, the sum of 1262 merks money. In 1663, he obtains decret against them, decerning them to pay the same. On this decret he now charges them with horning; which they suspend on this reason, that since the obtaining the said decret, Sir David has become debtor to the said Andrew Bruce younger, in a sum near equivalent, in so far as Sir David by his bond to Jo. Boyde, bailie in Edinburgh, obliges him to pay to him and his the sum of L.663, with L.80 of penalty, &c.: which bond Jo. Boyd has assigned to the said Andrew; who thereupon craves compensation and retention in his own hands; and so the letters must be suspended. At the calling of this suspension, there is produced for the suspender the bond granted to Jo. Boyde, with the assignation thereof made to him. There is produced for the charger his decret with the bond whereupon it proceeded, with the letters of horning raised on the same.

All which being heard, seen, and considered by the said Lords, they compense the said L.663 with the said sum of 1262 [merks] charged for; as also the annualrents of the one with the other. But will not sustain compensation of the penalty of L.80, contained in the said bond of L.663 compensated with, in respect, the charger has been oft suspended in this matter, and the suspender's assignation to the said bond is since pronouncing the decret charged on; so that they suspend the letters as to the said sum of L.663; but find them orderly proceeded, and so ordain them to be put in farther execution for L.330, as being contained in the said decret, by and attour what is compensated.

*Act. Suspenders*, Mr. Ja. Cheape. *Alt.* Mr. David Balfour.

*Signet MS. No. 79, folio 30.*