

defender foresaid from the summons of reduction intended against him, and declared him free therefrom in all time coming.

Act. Mr. Geo. Norvell. *Alt.* Sir George Lockhart, Mr. Alexander Spottiswood.
Signet MS. No. 84, folio 32.

1664. *January 20.* JOHN SIMPSONE *against* JAMES HALYBURTON, HELEN STIRLING, JAS. WEIMES, SIR JO. TOURS, WILLIAM TOURS, &c.

SIR ALEXANDER TOURS of Innerleith, as principal, Alexander Simpstone in Innerleith, and Alexander Steill in the Mains thereof, as cautioners, oblige them, by their bond in 1644, to pay to Jo. Simpstone, merchant in Edinburgh, the sum of 4000 merks. This bond Jo. registers in 1645; and inhibits him; which letters and their executions are also duly registered. Then assigns in 1645 the said bond, with the diligence done thereupon, to Robert Urie, writer in Edinburgh; who summons Jo. Tours, son and heir to the said Sir Alexander, granter of the bond, before the bailies of Edinburgh, where he obtains decret against him; as also before the sheriff of Edinburgh. Then by his retrocession he disposes over the same bond, with the letters of inhibition, and decret obtained by him, to the same John Simpstone, his cedent; who thereupon comprises the lands of Innerleith; and upon his comprising gets himself infest. In 1659 Jo. Tours, notwithstanding of this inhibition served against him, by his bond of alienation, sells the lands and barony of Innerleith to Alex. Halyburton, merchant in Edinburgh. Alexander dies. John Simpstone now raises a summons of reduction against Ja. Halyburton, his son and heir, Helen Stirling, his mother, and liferenter of the lands, Mr. James Weimes, parson of Kirkliston, her spouse, for his interest, Sir Jo. Tours, lately of Innerleith, William Tours, father brother, and so uncle to the said Sir Jo. and their tutors and curators, &c. charging them to compear, and exhibit before the Lords the foresaid letter of alienation, or disposition, made by the said Sir Jo. with consent of his said uncle, and dame Jean Ker old Lady Innerleith, to the said Alexander Halyburton, containing the lands under mentioned; Vindeston, the six acres of land called the Slucker-acres, Glegmensie, Wairdiemuire, Hirds-hill Coukepill, Cumlebank, Doucot's-croft, Easter and Wester Waltinshots, Easter and Wester Stanks, Easter and Wester Hoggitsheill, Foulfidus and Lovingrass meadows, Pyetshots, Eastern Lugsid, the Buts, the four Broom Parks, Wardie-toune and lands, and Craig of Innerleith; to hear and see the same reduced, and declared null *ex capite inhibitionis*. For instructing the summons there is produced the bond; the letters of inhibition duely executed and registered; the decret obtained against them at Robert Urie's instance; his translation thereof; the decret of apprising, &c. For satisfying the production there is produced the disposition called for; and it is alleged by the defenders that there could be no process of reduction sustained upon the foresaid inhibition, because the same was only raised upon a dependence. Whereunto it was answered by the pursuer, that he opposed the state of the process, wherein was produced not only the inhibition, but also the decret that followed on that dependence; so that there is no dependence now.

All which reasons the Lords having considered, they rescinded the said contract of alienation; declared the same to be null; and so reponed and repone the

said Jo. Simpstone, pursuer, *in integrum*, in sick like manner against the same as if it had never been made. Upon the pronouncing of which decret, William Tours gave in a supplication to the Lords, craving his advocates might have a sight of the said process before extracting of the decret; to the effect they might be heard upon their lawful defences thereagainst. The Lords, by their deliverance, ordain them to see the process in their clerk's hands; in the mean while stop the extracting of the decret, whereupon they are heard of new again. Notwithstanding of all their allegeances, the Lords adhered to their foresaid rescissory decret; only reserved to the said William Tours any right he had to the said lands of Innerleith, before the said inhibition was served.

Act. Mr. William Maxwell, Mr. Thomas Lermonth, Mr. Alexander Oswald.
Alt. Ja. Chalmers.

Signet MS. No. 88, folio 32.

1664. *January 20.* THOMAS HAMILTON *against* GEORGE TURNBULL.

GENERAL Major John Hamilton, son to Sir Alexander Hamilton of Ballincreiff, in 1648 obtains decret before the Lords of Session, against George Turnbull in Mirrietoune, for L.36 Sterling, in Scots money making L.432. Colonel John dies. His brother, Thomas Hamilton, confirms himself his executor dative and so pursues the said George; and in 1662 obtains a second decret for the said sum; whereon he charges him with horning: which letters he suspends, because the said first decret, (which was the ground of the second,) was for null defence, and not compearance, he never being summoned thereto, neither at his own house, nor at the market cross of Edinburgh, pier, and shore of Leith, as being then in England at the engagement; whereas, if he had been summoned he would have alleged, as he does now, that he is content to give his oath that he was never addebted in any sums of money to the said General Major; which would have been sufficient to have stopt the pronouncing of the said decret. *2do*, Albeit, Mr. David Thoires compeared for him in the said action, yet he had no warrant so to do, neither could he propone any defences for him (not having had any information;) only he craved a commission for taking the suspender's oath anent the truth of the debt charged for; which though granted, but instead of leading the commission, they extracted the decret charged upon against the suspender, without his procurator's knowledge; the verity whereof he refers to the pursuer's oath. *3tio*, The suspender has raised reduction of the said decreets; *Ergo*, At the calling of this suspension, there is produced a testificate under Sir Ja. Middleton's hand, bearing the suspender in 1648, the time of the pronouncing the said first decret, to have been under his command. As to the foresaid reasons of suspension, coincident with the reasons in the reduction, it was answered for the charger; that they opponed the last decret in 1662 charged on, bearing the said reasons to have been all then proponed by way of defences, and to have been repelled; because Colonel Hamilton having obtained decret for the same in 1648, the suspender should have craved to [have] been reponed during his lifetime, (who likely might have proven the debt otherwise than by the suspender's oath,) and not now when he is dead; which may seem to