

have been done of purpose : but this charger as executor, (it being so long since,) cannot prove it. *2do*, The suspender purges not his contumacy, by alleging he was then in the army, because this decret was obtained in January 1648; whereas the engagement was not till the July thereafter. *3tio*, As to the testificate, it wants writer's name, and witnesses; *item*, contains a false narrative; *igitur*, ought not to be respected.

In respect of which answers, the Lords found the letters orderly proceeded, ay and while the suspender pay the sum charged for. *Item*, assoilye the pursuer from the said summons of reduction intented against him.

*Act. Suspende*, Mr. Nathaniel Fyfe. *Alt.* Mr. Robert Sinclair.

*Signet MS. No. 89, folio 33.*

1664. *January 19.* JOHN MACMILLANE *against* JOHN BROWN of Mollance.

*Apud* Edinburgh, 19th January, 1664, *licet hic scribatur.*

BY a contract of wadset, in 1648, William Macmillane in Bar, lends to John Brown of Mollance 1000 merks; wherefore Mollance wadsets and dispones to him the lands of Garranton, lying within the parish and barony of Crocemichell, and stewartry of Kirkcubright, for the yearly payment to him of 80 merks; always redeemable to him upon payment of the said 1000 merks. John Macmillane, son to the said William, registers this contract; and, upon his decret of registration, charges John Brown of Mollance, son to the said John, granter of the wadset. This charge he suspends, on thir reasons, *1mo*, Because the charger in 1658, assigned his brother William to 400 merks of the said 1000 merks; contained in the contract; which assignation was duly intimated to him; and conform thereto, he had paid the said 400 merks, as the [said] William his discharge thereof produced did prove. As [to] the remaining 600 merks, the suspender, by an authentic instrument, taken in a notary's hand thereupon, offers him to prove, that conform to an agreement and condescendence betwixt him and the charger, he made real offer to the charger of 400 merks thereof. As to the other 200 merks, the same is arrested at the instance of two several persons in his hands, as the copies of the said arrestments delivered to him prove; so that, till they were loosed, he could not obey this charge. At the calling of this suspension, there were farther thir eiked reasons added, *1mo*, The letters ought to be suspended, because, in the contract of wadset, there is a clause of requisition on forty days; but so it is, no requisition was used, at least no instrument produced for proving the same. *2do*, There was at the time of the said contract of wadset, a back bond granted by John Macmillane, the charger's father, whereby he superseded, the exacting of the said 1000 merks from the suspender's authors, during all the days of Rosina Mac-kantney, the charger's mother's lifetime, and for thirteen terms thereafter; but so it is, the said Rosina died but in 1659, and there are not thirteen terms elapsed since. *Igitur*, the letters must be suspended. *3tio*, The annual-rent must be restricted to six of the 100, which is at eight in the contract. To thir it is answered by the charger's procurators, *1mo*, That he acknowledges his assignation of 400 merks of it to his brother; and therefore restricts his charge to the remaining 600 merks. *2do*, To the clause of requisition contained in the contract,

he fulfilled the same; for proving whereof, an instrument of requisition, taken in 1658, is produced. And for the annual-rent, craves but six for the 100. *4to*, As for the second eiked reason, (which the suspender's procurators declared they insisted on,) and for the eliding thereof, there is produced a bond of corroboration granted by the suspender, whereby, in 1663, he obliges him to pay to the charger the said sum of 600 merks, (and that notwithstanding of any suspensive clause contained in the said back bond,) betwixt and July next.

In respect of which answers, the Lords, (notwithstanding of the reasons of suspension, both libelled and eiked,) found the letters orderly proceeded; and ordained the same to be put to further execution, ay and while the suspender pay to the charger the sum of 600 merks, whereto the charger restricts his charge, with the ordinary annualrent at six for the hundred.

*Suspender*, James Brown. *Alt.* Mr. William Maxwell.

*Signet MS. No. 90, folio 33.*

1664. *January 21.* STEVEN TOUCH *against* The TENANTS of Falkland.

IN 1642, William Touch, merchant in Leven, and Christian Cunnygham, his spouse, and the longest of them two in conjunct fee, were infeft in an annual rent of L.80, to be uplifted yearly, furth of the lands of Falkland, that appertained to Jo. Avarie, burgess thereof. Upon the which infeftment William Touch in 1647 obtains decret before the Lords, for pointing the readiest goods and gear that should be found on the ground of the lands, out whereof the annual-rent is payable; and failyeing thereof, to apprise the ground right of the lands, &c. After this, William dies; and his son George Touch serves and retours himself heir to his father; and, accordingly, in 1654 obtains himself infeft in the annualrent above rehearsed, to be uplifted out of the lands above written. Then George disposes the same to Stevin Touch, skipper in Leven. Conform to this disposition, containing assignation, the said Stevin was infeft in 1659; and thus, as having right, both by disposition and assignation, from one that was both served heir and confirmed executor, he raises a summons for pointing the ground, against the tenants and present possessors thereof. For instructing the summons there is produced William Touch's seasine, with the decret obtained at his instance in 1647; then George his retour to his father, with his seasine following thereupon; then George's disposition thereof to this pursuer, with his seasine taken thereupon.

It is ALLEGED, by the defender's procurator, That there can be no decret of pointing of the ground at the pursuer's instance, because no seasine produced for him of the tenements of lands craved to be pointed. *2do*, Though a seasine be produced, yet the same is base, and not clad with possession, and so cannot be respected. *3tio*, The ground cannot be decerned to be pointed, because in the tenements libelled they are tenants to one Martha Blyth, liferentrix of them.

To the first of thir it was REPLIED,—That they opponed the seasine produced. To the second, opponed the decret of pointing in 1647. *Item*, That they were tenements within burgh. To the third, the same must be repelled, because the said