

ren, &c. would be superfluous, and altogether needless, as being largely included in the first case. And albeit, it may be objected, that *posteriora derogant prioribus*, and so that the clause of the translation should derogate to the clause in the assignation; yet that can have no weight here, seeing the translation expressly provides, that the right of the bond shall only come to her brother, conform to the meaning and tenor of the assignation made by her father to her, and no otherways; so that the conditions of the substitution in the assignation will be our only rule here, for interpreting the translation by; which if it has been otherways framed, the same must, beyond all doubt, have been the error and mistake of the writer allenary.

Which disputethe Lords having considered, they repelled the allegiance in respect of the answer made thereto; and therefore found the said first case in the reservation of the translation in favours of her brother, to have been the mistake of the writer; and that her brother's right must be understood to be only reserved in the terms and cases contained in the assignation made by Sir Thomas to his daughter. *Item*, Found that the saids cases of her brother's substitution had not existed; and therefore found the Laird of Keir to have only good and undoubted right to the saids bond and sums. And this the Lords decerned partly because of the writs above mentioned produced for the Laird of Keir; and partly because the executors and nearest of kin of the said Lady Keir, being oftentimes summoned, and not compearing to show their right; as also Ja. Chalmers as procurator for them having seen and returned the process, refused to answer therein. In respect of all which, the Lords found the letters raised at Keir's instance against the Earl of Roxburgh orderly proceeded; and therefore ordain Keir to be answered of the said sum, as partly found only to have best right thereto. *Item*, discharge the executors and parties from all troubling of the said Earl, as parties found to have no right for aught that is yet seen.

Suspender, Earl of Roxburgh, Sir Peter Wedderburn, Mr. Thomas Lermonth.
Alt. Mr. Jo. Cunninghame.

Signet MS. No. 17, folio 43.

1665. *January 21.* ALEXANDER ETTERS HANKS and JOHN ARCHBALD *against*
The EARL of HADDINGTON.

WILLIAM GRAY, by his bond in 1660, obliges him to pay to Alexander Ettershanks, cooper in Aberdeen, L.380. The same William, by another bond in 1654, obliges him to pay to John Archbald, burgess there, the sum of L.248. William deceases; bastard. The Earl of Haddington gets the gift of his bastardy, as before ye have seen in the decret, Gray *contra* the Earl of Haddington, 20th January, 1665. Him, therefore, thir two creditors pursue, as liable in payment of his debts; *item*, as come *in vice* and place of the said deceased William Gray, and so obliged to perform his deeds and obligements, sicklike and in the same manner as if he had been executor confirmed, or heir served and retoured to him. For instructing the summons there is produced the said two bonds, both of them allowed and recorded in the Exchequer.

It was ALLEGED for the defender,—*Imo*, No process, because all parties having interest are not called; *videlicet*, the principal Treasurer, and his deputes.

To this it was ANSWERED,—That they opponed the executions wherein they were called.

2do, Alleged that the donatar was not obliged to pay debt. *3tio*, That the defender had granted a bond to the Exchequer already. *4to*, That the most he could be obliged to do was to denude himself of so much of William Gray's estate, as would satisfy the said two debts.

To thir it was ANSWERED, as you will find in the forecited decreet, Gray against Earl of Haddington.

The Lords decerned the Earl to make payment as ye have there.

Act. Mr. William Moir. *Alt.* Ja. Chalmers.

Signet MS. No. 18, folio 43.

1665. *January 25.*

SIR ROBERT FARQUHAR of Monie *against* SIR JOHN URQUHART of Cromartie.

THERE is a disposition granted and subscribed by Sir John Urquhart of Cromartie to Sir Robert Farquhar of Monie in 1657, whereby he obliges him to infest and sease the said Sir Robert in sundry lands, with the teind sheaves thereof, lying within the barony of Craigsintrie and Sherifffdom of Aberdeen; *item*, to make, subscribe, and deliver securities requisite thereanent; *item*, to warrant the same from all wards, releifs, &c. against all deadlie; *item*, from all ministers' stipends, annuities, cesses, &c. and all impositions whatsoever; *item*, to enter him to the possession of the said lands, (which he shall warrant to him as lawful,) and to the uplifting the maills thereof; *item*, to deliver him up the writs and evidents of the said lands. This disposition Monie registers in 1662; and then charges with horning to fulfil the said disposition in all the heads thereof; *id est* to deliver him up the evidents of the said lands; to warrant to him the said lands; to relieve him of some burdens and costs he had sustained; *item*, to refund him some farms and duties uplifted out of the said lands by Cromarty, or his chamberlains. This charge Cromarty suspended on thir reasons, *Imo*, Because the said was altogether malicious against him, seeing there is not so much as an article or head of the said disposition that the suspender had not four years ago performed and fulfilled to the charger; as he had infest him in the said lands; he had granted him all securities requisite thereanent; he had given up the evidents thereof; he had entered him to the peaceable possession of the same. But *2do*, As to the obligation for warrandice, besides that the charge thereanent is general, he was altogether *in mala fide*, to vex the suspender therewith, seeing he neither does instruct nor can instruct any distress to infer warrandice. At the calling of this suspension, it was eiked for the suspender, that the said charger not qualifying any distress, as the truth is he is not actually distressed through the suspender his not implement of any clause of the said disposition wherein he stands obliged, there can be no warrandice pursued for by way of action; much less can there be any charges of horning raised for that effect. The charger's procurator declared that he passed from the suspender's oath, *pro loco et tempore*, and (giving in the special charge after following) craved certification against the suspender for not delivering to the charger of a sufficient heritable right of the teinds; for not purging of the