

termination of two friends; without which the cedent filled up most fraudulently the sum charged for.

The first part of this eiked reason, *videlicet*, That the assignation was to the cedent's behoof, the Lords found it relevant to be proven by the assignee his oath: whereupon a commission is taken to the bailies of Perth for taking his oath; who deponing that it was to his own behoof, the Lords found the letters orderly proceeded as to the sum charged for.

*Charger*, Yeoman.

*Alt.* Nathaniel Fyfe.

*Signet MS. No. 84, folio 64.*

1665. *February 18.* Jo. BROUN *against* MARGARET TAITT, Relict of Thomas Burn, and MARGARET TAITT, her Mother.

MARGARET TAITT, relict of Thomas Burn Candlemaker in Edinburgh, and Margaret Taitt, widow, her mother, as cautioner, in 1662 grant bond to Pat. Broun fletcher, for 1700 merks. Pat. assigns his brother, Jo. Broun merchant, to this bond; and he dying within four days after the assignation, Jo. charges with horning, denounces, registrates, raises letters of caption, takes them and imprisons them. They suspend, *1mo*, Because prove 700 merks of it paid by discharges produced. *2do*, Consign 300 merks in the clerk of the bills his hands to be given up to them. Deny the remanent of the debt. *3tio*, The assignation was not intimate till after Pat. his decease; and, therefore, Jo. unwarrantably charged with horning, and then raised caption; since the most he could have done in that case, was to raise a summons against the suspenders to hear and see themselves decerned to pay, &c. wherein they would have had liberty to propone all their lawful defences.

The Lords suspend for the sum instructed paid by the discharges; *item*, For the sum consigned. Find them orderly proceeded for the rest.

*Suspender*, Abernethy.

*Alt.* James Broun.

*Signet MS. No. 88, folio 64.*

1665. *February 18.* ALEXANDER FRASER of Philorth *against* The MAGISTRATES of ABERDEIN.

ALEXANDER FRASER of Philorth, as donatar to the liferent escheat of Sir Alexander Fraser of Fraserburgh, his godsire, charges the Provost, Bailies, and Council of Aberdein, to deliver to him two great fleiting tuns and four small ones, with their iron chains, iron girts, wedges, mells, gavelocks, and other ornaments and pertinents which were lent to them by the said Sir Alexander, and which they were ordained to redeliver by a decret of the Lords in 1643. This charge they suspend *1mo*, That they are not the Magistrates that were in office the time that decret was pronounced against the town, and so are strangers thereto. *2do*, The charge ties them to an impossibility, to wit, to redeliver them in six days. Now they,

are of so huge a quantity, that they cannot be transported by land ; and by sea its thirty-six miles betwixt Aberdeen and Fraserburgh, (where the charger dwells,) and the seas are now troublesome. *3tio*, The suspenders were ever, (as they are likewise now,) most willing to redeliver them, as appears by an offer thereof made by them to Philorth in 1652, and instruments taken thereupon that he refused. *4to*, In case of their not delivery of the tuns themselves, offer the value and prices of them, as they shall be liquidated by indifferent and judicious men, they being really worth L.2000. *5to*, The charge is general, and so no obedience can be given thereto ; it condescends not on the pertinents ; it condescends not on the manner how they should be delivered, nor the place whereat, &c.

The Lords find the letters orderly proceeded ; ordain them to be redelivered to Philorth ; supersede execution till the 1st of June next to come.

*Act.* for Philorth, Pat. Fraser.

*Alt.* Sir Thomas Wallace.

*Signet MS. No. 89, folio 64.*

1665. *February 20.* TOWN of EDINBURGH *against* SIR WILLIAM THOMSON.

THE Council of Edinburgh, without the concurrence of the crafts and their extraordinary deacons, having deposed Sir William Thomson, their clerk, for this fault, that the excise of their Town being farmed to three or four brewers by way of tack and contract, wherein the Council subscribes their part of the tack, and remits to Sir William to see the fermorars subscribe for payment of the duty, and he neglecting to get their hands thereto by the space of year and day ; and at the expiring of the tack the fermorars craving ease of the duty, and being threatened with a charge of horning, the town finds the tack not subscribed ; and they having ordered Sir William to see it done, and committed it to him by an act of their council ; they representing to him his fault, he submits his censure to the council, who immediately deposes him, without either citation, libel, or any other solemnity : he thereon raises reduction, upon four reasons, which are set down at large in the informations.

The Lords, at the advising of the cause, fell, *1mo*, on the relevancy of the cause of his deposition. After some debate anent the method to be observed, they found the cause of his deposition relevant, unless he could prove the tacks were yet subscribed. The reasons moving the Lords were, *1mo*, That so great a neglect was a presumption of dole on Sir William's side, though he offered to make up the damage sustained by the town through the fermorars their not subscribing. And, *2do*, they thought that though the way of procedure was somewhat illegal against a clerk, provided *ad vitam* to his place, yet that *multa fieri non debent quæ facta valent*, especially betwixt a master and a servant. The dispute I have at large.

*Act.* Wedderburne, Sinclar and Lockhart.

*Alt.* Wallace, Cunnyghame and Mackenzie.

*Advocates' MS. folio 53.*