

ing of the debt owing to the defunct, and acclaimed by one of his executors, which might be sought for that executor's own half, albeit the other should not concur: And sicklike, albeit one of the parties bound had suspended, the Lords found, that that was no cause but that execution might be sought against any other party bound conjunctly and severally, he who first suspended being dead, and that the person now charged ought to repeat, in this suspension, any reason and argument contained in that suspension, if any was contained therein, which might suspend the charges and payment now used and sought from him; which former suspension the Lords found not to be a reason to stay execution against this suspender, except the reason thereof being repeated here be relevant to import the same.

No. 3.

*Alt. Oliphant.**Durie, p. 210.*

1628. *March 4.* GLEN *against* FRASER and HAMILTON.

Glen of Barre is charged by Fraser of Knock, and Hamilton, for fulfilling of a contract, containing divers heads. Barre suspends, and one of the heads of the suspension is discussed; and Knock is content to take out his decret anent that head, and to pass from the rest *pro loco et tempore*, and that Barre shall be charged of new before he can put the letters to execution against him; but alleged the pursuer could not so do, but that the hail suspension behaved to be discussed *simul et semel*. The Lords found he might pass from part of his charge, although the hail be suspended.

[No. 4.

Auchinleck MS. p. 225.

1628. *December 13.* M'CULLOCH *against* EARL of MORTON.

In suspensions of double-poining, sometimes one of the parties compears, and propones reasons to exclude the other party, and yet will not crave to be answered and obeyed of the duty in question; which the Lords sustained in the suspension of double-poining received by M'Culloch of Ardwall against the Earl of Morton, principal tacksman of the teind of Ardwall, to the Earl of Galloway, who had let the suspender a sub-tack, with consent of the said Earl on the one part, and the Earl of Galloway on the other part; which of them had best right to the duty of the suspender's sub-tack: It was alleged by the Earl of Galloway, that the duty could not belong to Morton, because Morton's was reduced, and so *per consequentiam* the debtor's sub-tack; but at this time he would not dispute farther but to exclude Morton.

No. 5.

Auchinleck MS. p. 226.