

S E C T. V.

Second Suspension.

1628. February 28.

GLEN of BAR against L. KNOCK.

No. 36.

In a suspension between Glen of Bar, and L. Knock, a reason of suspension being founded upon a writ, made by the charger, which was produced to verify the reason, the letters were found orderly proceeded notwithstanding thereof, because there was a former suspension upon this same reason discussed, finding the letters orderly proceeded, for not verification thereof; so that albeit the reason was both relevant, and here instantly verified, yet seeing it was not verified in the former suspension, but decret given against him for not verifying thereof, there being a term affixed to the suspender to have proved the same, and he failing to do it, therefore they found, that the verification could not be here received in this new suspension, after a term affixed in the first, as said is.

Act. Hope.

Alt. Stuart & Cunninghame.

Clerk, Scot.

Fol. Dic. v. 2. p. 416. Durie, p. 351.

* * Auchinleck reports this case :

Hamilton, relict of Glen of Bar, charges Archibald Glen, heir, to infest her in an annual-rent, conform to her contract of marriage. The defender suspends, that by a posterior transaction betwixt the suspender and her, it was agreed that she should accept a certain sum in contentation of the whole conditions in her contract of marriage; and for proving of this reason, the suspender obtained an incident for a term to produce the minute of the said transaction, which term was circumduced. Thereafter he having recovered the said minute, suspends of new upon the foresaid reason. The pursuer alleged, that he could not be heard to allege this minute now in the second suspension, because having an incident granted to him before, he circumduced the term; and if this were granted, there would be no end nor certainty of processes of this nature.

The Lords repelled the reason, and found the letters orderly proceeded.

Auchinleck MS. p. 100.

* * Spottiswood also reports this case :

Archibald Glen of Bar, having suspended a charge given him by John Fraser of Knock, for fulfilling a contract, upon this reason, That by a minute of a con-

No. 36. tract passed between the pursuer and defender, thereafter they had transacted otherwise ;—this reason being found relevant, and a day assigned to the suspender for proving thereof, he failed therein, and the term was circumduced, and the letters found orderly proceeded. Afterwards Glen suspended upon the same reason again, and produced the said minute. The Lords would not receive it, in respect he had suffered the term in the first suspension to be circumduced against him.

Spottiswood, p. 324.

1632. July 10.

HUME *against* BOWMAKER.

No. 37.

A fact which could not be ascertained in the first suspension, admitted to discussion in a second.

One Hume having acquired the right of the life-rent of Bowmaker, by his annual rebellion, and after general declarator, having obtained decret of removing against him ; which being suspended upon a reason, viz. That the donatar, the time of the gift granting, had granted a bond to the Earl of Mar then Thesaurer, to use the same by his advice, for the good of the rebel's creditors ; and for not verifying of this reason, the letters were found orderly proceeded ; and thereafter a new suspension being raised upon this same reason, and the bond, with the Earl of Mar's declaration, how the donatar should use his gift, being produced for verifying thereof ; it was questioned by the donatar, that after decret upon the first suspension, against the same reason for not verifying thereof, the verification now ought not to be respected, nor received, otherwise there would be no end of plea ; for if, at the second suspension, the verification were receivable, it might be as well received in the third or fourth, and so *in infinitum* ; and if decret were given for not probation of an exception admitted, that decret could never be taken away by production of any probation thereafter, in any second instance, far less ought it to be received by suspension after decret once given, and thereafter another decret given upon suspension, finding the letters orderly proceeded, for not verification. The Lords notwithstanding found, that they would receive the verification in this second suspension, albeit it was not produced in the first, especially seeing it was not the suspender's own bond, but was made by a third person to the Thesaurer, and that it depended upon the Thesaurer's declaration, which was only made since the first suspension was discussed, and which is not easy to the parties always to obtain, but must be attended while he pleased to give it ; and the Lords found this declaration now produced, made by the Earl of Mar, being then Thesaurer, ought not to be respected, seeing the back bond was granted to the Earl of Mar, being then Thesaurer, and he ceased to be in that office the time of the declaration, and long before, and so that it was not proper to him to declare, as Earl of Mar, how that gift should be used, by virtue of the back bond, the power whereof to declare was only proper to the Thesaurer, being in office for the time, and not to the person receiver of the bond, if he should be out of office when he declared ; for the power of such bonds followed the suc-