

valid renunciation now, was not time, seeing *res non erat amplius integra*, by reason of decreets recovered against the suspender: it was duplied, that they opposed the former reason of suspension; and that the charger, by their consent, should have all real execution he pleased.

Susp. Sir Geo. Lockart, Mr. George Mackenzie. *Alt.* Mr. Rodger Hog.
Signet MS. No. 39, folio 13.

1663. *December 16.* ALEXANDER ANDERSON *against* JO. CHALMER of Collonach, and JO. CHALMERS, Minister at Gairtley.

ALEXANDER COLLIE, sometime in Langmuire, now in Scaitmuir, by his bond, obliges him to pay to Patrick Ferguson, burgess in Aberdein, the sum of L.53 yearly, for the years 1627, 1628, for his own entertainment; *item*, forty merks for his son's entertainment in 29, 30, 31, 32, 33, 34, &c. On this registrate bond, Patrick charges him, *in anno* 1656, with letters of horning. After, he is orderly denounced rebel, and lies year and day at the horn, unrelaxed; whereby, conform to the laws and practise of this realm, and privilege of the crown, his liferent-estate fell in the king's hands, and became in his gift and disposition: who, by a letter of gift under the privy seal, disposed the same to Captain William Barclay of Auchvedy: who immediately intents summons of declarator of the escheat, against the said Alexander Collie; summoning him to compare, and hear it found and declared by the Lords, that he was orderly denounced; that he lay year and day under the said process of horning; that therethrough, all his goods, escheatable, as well moveable as immoveable, that pertained to him, the time of the said denunciation, or that accresced to him since syne, with the liferent escheat of all his lands, heritages, &c. were at the king's gift, and so do appertain to the said pursuer as donatar.

The Lords decerned, conform to the desire of the summons. This letter of gift, with the decret of declarator thereupon, the said Captain assigns to Mr. Alexander Anderson, servitor to Sir Jo. Fletcher, king's advocate; who understanding that Mr. Jo. Chalmer of Collonach, as principal, and Mr. Jo. Chalmers, minister at Gairtley, as cautioner, had granted them to have borrowed from the said Alexander Collie, 1000 merks, and obliged themselves to the repayment thereof; he, by virtue of his assignation to the foresaid gift and decret of declarator, having good and undoubted right to call for all debts or sums of money owing to the party denounced, pursues the said Collonach, principal, and Mr. William Chalmers, as son and heir, at least executor confirmed, to the deceased Mr. Jo. minister at Gairtley, for payment making of the said 1000 merks to him. For instructing the points of the forementioned summons, there is produced by the pursuer, the king's gift, with the decret of declarator; then his assignation he has thereto; then a decret of suspension purchased by the said Collie, against the said Chambers, finding the letters orderly proceeded against them, and ordaining them to have effect, ay and while the suspenders should make [payment] of the sum of 800 merks, which the Lords found really to be due, assoilyeing them from

the other 200 merks charged for ; upon production whereof, the pursuer declared that he was likewise content to restrict his summons to the 800 merks specified in the said decret of suspension. And for proving the passive titles against Mr. William Chalmers, he produced the extract of his father's testament, duly confirmed by the Commissary of Murray, decerning also the said Mr. William executor to his father.

ALLEGED by the defenders' procurators, that no process could be granted against them at this pursuer's instance, because in May 1659, there was a condescendance and minute made betwixt the said defenders and Collie, by which they were obliged to infest him in an annualrent effeiring to the sum of 800 merks, contained in the decret of suspension, out of the lands of Ashogle: by which destination the sum was made heritable ; and so could not fall under escheat, and consequently, neither pertain to this donatar nor his cedent. Whereunto it was replied by the pursuer's procurator, that the allegiance ought to be repelled, because there was no such condescendance produced ; likeas, although the same had been produced, yet could it not have been respected, because if any condescendance was betwixt thir defenders and the rebels, the same was long after the rebellion, he being rebel in 1656, and the condescendance being in 1659 ; and, therefore, done in defraud of the fisk ; and so could neither prejudge the king's donatar, nor the donatar's assignee.

The Lords repelled the allegiance, in respect of the reply, and decerned the defenders to make payment to the pursuer of 800 merks ; assoilyie them as to the 200.

Act. James Abernethy. *Alt.* Thoirs.

Signet MS. No. 41, folio 14.

1663. *December 16.* CHRISTIAN LEVINSTONE, Viscountess of Oxenford, *against*
ROBERT, Viscount of Oxenford.

THERE is a contract of marriage passed betwixt Sir James M'Gill of Cranston-Riddell, Knight Baronet, one of his Majesty's Senators of the College of Justice, and Christian Levinston, second lawful daughter to William Levinstone of Kilsith, procreated betwixt him and Margaret Ramsay, his spouse. In this contract my Lord Oxenford (afterwards so,) binds and obliges him to infest his future spouse, in her pure virginity, before the completing of the said marriage by charter and seasing, *titulo oneroso*, in an annualrent of 2400 merks, to be uplifted by her, during her lifetime, out of the lands of Pentcaitland ; which is declared to be to her in contentation and satisfaction of all terce and third that she might crave, suit, or claim of any lands, heritages, mills, &c. pertaining to him the time of his decease. My Lord Oxenford dies in May, 1663. In his testament he nominates his son his sole and universal legatar and executor ; nominates Sir Ja. Richison of Smeton, David M'Gill of Rankellor, Sir Ja. M'Gill fiar thereof, and Mr. Ja. M'Gill, minister at Largo, tutors. The Viscountess has eight or ten weeks to go of a posthumous child after my Lord his decease. She, upon her bond, from the tutors, obtains L.30 sterling, for de-