

Pitfoddells' lands was but L.15,245, and not L.16,000; yet Pitfoddells must be liable for the whole back tack-duty of L.1040, contained in the said second contract betwixt them; and that in regard that the said declaration is but the declaration of a bankrupt. *2do*, Offers him to prove that Pitfoddells was indebted to John Donaldsone in several other sums of money, besides that contained in the said contract; which the said creditors assignees crave may be made forthcoming to them. Whereunto it was answered for Pitfoddells, that the allegiance foresaid was competent and omitted. *2do*, That the creditors' assignees cannot quarrel the foresaid declaration, because their assignments and this declaration are of one and the same date, yea, *laborant eodem vitio*, for they bear that he was then going out of the country. As for the personal debts alleged due by Pitfoddells to John, he denies there were any; and if there were, let the creditors assignees pursue against him, *via ordinaria*, for the same, and they shall get an answer.

Which allegiances and answer thereto being reported by the said Lord Reddie to the whole Lords, they repelled and repel the allegiance in respect of the answer thereto; and find only half a year's tack-duty of the said sum of L.15,245 resting owing before the said comprisings; which the Lords ordain to be consigned in Robert Hamilton, clerk to the process, his hands to be made forthcoming to such of the creditors assignees of the said John Donaldsone, as shall be found to have best right thereto. *Item*, The Lords reserve action for any other debt due by Pitfoddells to John Donaldsone, by and attour the sum foresaid contained in the wadset, at the creditors assignees their instance. Finally, ordain letters of horn-ing on a simple charge of fifteen days, and other executorials needful to be directed thereupon, in form as effeirs. According to which ordinance of the Lords, immediately after the same, Pitfoddells consigned L.457 as the said half-year's tack-duty to be made forthcoming as is aforesaid.

Pitfoddells compears by Sir Jo. Fletcher, King's Advocate, for the King's interest; Sir John Nisbett, Sir Thomas Wallace, and Patrick Fraser. The creditors assignees compear by Sir Peter Wedderburne, James Brown, Mr. David Thoires, Mr. William Strachan, and Mr. Alexander Seaton.

*Signet MS. No. 68, folio 21.*

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1664. *January 14.* THOMAS MONCUR *against* JAMES DOUGLAS of Inchmarto.

MR. JAMES DOUGLAS of Inchmarto, in 1660, by his bond obliges him to pay to James Petrie, and Janet Findlay his spouse, indwellers in the Wood-End of Glencomon, the sum of 400 merks, with L.100 of expenses. James Petrie, again, by his back-bond granted to Inchmarto, obliges him, that if Sir William Douglas of Glenbervie, and James Douglas of Stampeth, his father-in-law, obtain decret against him for the said sum of 400 merks, grounded upon a tack; that then, and in that case, James Petrie shall suit no payment upon this bond of Inchmarto's; but re-deliver him it. Whereupon Inchmarto granted Glenbervie his bond for the said sum of 400 merks, in case he should be found to have best right thereto. Glenbervie thereupon raises a summons against Inchmarto and James Petrie for payment making to him of the said sum of 400 merks. While this is depending, James Petrie assigns the bond he had from Inchmarto for the said 400 merks, to Thomas Moncur, son natural to Thomas Moncur, goldsmith in Aberdeen. He

upon his assignation raises letters of horning, and charges Inchmarto to pay the said 400 merks to him. Inchmarto suspends upon double poinding, and concludes that he may not be liable in double or twice payment; seeing he is willing to pay to any of the two persons that shall be found to have best right thereto. The double distress he instructs by James Petrie's back-bond to him; by his bond he has granted to Glenbervie; and by the summons raised at Glenbervie's instance, for payment making of the same sum as yet depending; which all would be good reasons of suspension against the cedent; and, therefore, also against his assignee; especially here, where the assignation is to the cedent's behoof, as he offers to prove by his oath of verity: craves, therefore, the letters be suspended, while the action intented at Glenbervie's instance be determined. This suspension being called, there was produced for the charger the registred bond and the assignation. To the reason of suspension it was answered by the charger's procurators, that the same ought not to be respected, because by the back-bond, the charger's cedent is only obliged to refund the sums, in case Glenbervie should recover decret before the late Commissioners; which he has never done; *igitur*. *2do*, The charger, in case Glenbervie was ready to insist for his foresaid summons, was willing to dispute with him. *3tio*, Offers to the suspender (he paying the sum charged for) to grant him a discharge, with absolute warrandice at all hands.

All which being considered by the Lords, they find the letters orderly proceeded, and ordain them to be put to farther execution; ay and while the suspender pay to the charger the said 400 merks, with the L.100 of expenses. Always reserving to Glenbervie his action upon the tack for the said sum, against the said James Petrie, the charger's cedent, as accords of the law.

*Suspender*, Patrick Fraser. *Alt.* Mr. Andrew Birnie.

*Signet MS. No. 71, folio 27.*

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1664. *January* 16. ANDREW ARRAT *against* JO. LINDSAY of Edzell, and JO. LINDSAY of Pitstandlie.

*In anno* 1651, George Lord Spinie, as principal, Jo. Lindsay of Edzell, and Jo. Lindsay of Pitstandlie, as cautioners, by their bond oblige them to pay to Isobel Arrat, lawful daughter to William Arrat of Dunbaro, the sum of 3000 merks. Isobel in 1654 registers it; and in 1658 she assigns the same, with consent of Jo. Ramsay of Augharagh, to Alexander Arrat, her brother-german. He, by his disposition in 1661, transfers the same to Andrew Arrat, his brother; who charges Lindsays, the cautioners, with letters of horning thereupon. Thir they suspend, *1mo*, Because the same charger having formerly charged them on the same bond, they had suspended him then; which suspension, (though often called and disputed *in foro contradictorio*,) stands yet undiscussed; it was therefore mere malice in the charger to raise new letters of charge against them, only to put the suspenders to trouble and unnecessary charges. *2do*, Though the cause of the bond granted to Isobel Arrat, whereon the charge is founded, is said to be borrowed money, yet it is notour that the said Isobel never delivered any more to the said Lord Spinie, nor the half of the said sum of 3000 merks; only the bond was granted for the whole, because she faithfully promised to pay the rest within