

To this it was ANSWERED,—That they opposed the executions wherein they were called.

2do, Alleged that the donatar was not obliged to pay debt. *3tio*, That the defender had granted a bond to the Exchequer already. *4to*, That the most he could be obliged to do was to denude himself of so much of William Gray's estate, as would satisfy the said two debts.

To thir it was ANSWERED, as you will find in the forecited decreet, Gray against Earl of Haddington.

The Lords decerned the Earl to make payment as ye have there.

Act. Mr. William Moir. *Alt.* Ja. Chalmers.

Signet MS. No. 18, folio 43.

1665. *January 25.*

SIR ROBERT FARQUHAR of Monie *against* SIR JOHN URQUHART of Cromartie.

THERE is a disposition granted and subscribed by Sir John Urquhart of Cromartie to Sir Robert Farquhar of Monie in 1657, whereby he obliges him to infest and sease the said Sir Robert in sundry lands, with the teind sheaves thereof, lying within the barony of Craigsintrie and Sherifffdom of Aberdeen; *item*, to make, subscribe, and deliver securities requisite thereanent; *item*, to warrant the same from all wards, releifs, &c. against all deadlie; *item*, from all ministers' stipends, annuities, cesses, &c. and all impositions whatsoever; *item*, to enter him to the possession of the said lands, (which he shall warrant to him as lawful,) and to the uplifting the maills thereof; *item*, to deliver him up the writs and evidents of the said lands. This disposition Monie registers in 1662; and then charges with horning to fulfil the said disposition in all the heads thereof; *id est* to deliver him up the evidents of the said lands; to warrant to him the said lands; to relieve him of some burdens and costs he had sustained; *item*, to refund him some farms and duties uplifted out of the said lands by Cromarty, or his chamberlains. This charge Cromarty suspended on thir reasons, *Imo*, Because the said was altogether malicious against him, seeing there is not so much as an article or head of the said disposition that the suspender had not four years ago performed and fulfilled to the charger; as he had infest him in the said lands; he had granted him all securities requisite thereanent; he had given up the evidents thereof; he had entered him to the peaceable possession of the same. But *2do*, As to the obligation for warrandice, besides that the charge thereanent is general, he was altogether *in mala fide*, to vex the suspender therewith, seeing he neither does instruct nor can instruct any distress to infer warrandice. At the calling of this suspension, it was eiked for the suspender, that the said charger not qualifying any distress, as the truth is he is not actually distressed through the suspender his not implement of any clause of the said disposition wherein he stands obliged, there can be no warrandice pursued for by way of action; much less can there be any charges of horning raised for that effect. The charger's procurator declared that he passed from the suspender's oath, *pro loco et tempore*, and (giving in the special charge after following) craved certification against the suspender for not delivering to the charger of a sufficient heritable right of the teinds; for not purging of the

lands of Middlethrid; *item*, for not delivering of the writs of the said lands: which condescence being made, the Lords assigned to the suspender a term against which he should upon oath deliver up to the charger the writs of the said lands; *item*, should purge the said infetment. And as to a valid right of the teinds, the suspender offering a registered contract betwixt the Earl of Errol and the suspender, containing a long tack of the teinds, the charger's advocate took the same up to see; which, after he had seen, having reproduced, he, upon certain reasons, refused to accept of the same as a valid right.

Whereupon the Lords, by their interlocutor, found the said contract did not satisfy the charge; and therefore assigned the suspender a day to produce a sufficient right to the said teinds, whereto he stood engaged by the disposition, with certification, &c. Which they failyieing to do, the term was circumduced against them; and the Lords found the letters orderly proceeded, aye and till the suspender should deliver to the charger a sufficient heritable right of the said teinds; *item*, should purge the said wadset; *item*, should deliver the evidents of the said lands, &c. conform as he stands obliged by the said disposition to the charger.

Suspender, Mr. Geo. M'Kenzie. *Alt.* Mr. David Thoires.

Signet MS. No. 20, folio 44.

1665. *January 27.* JO. LOGAN of Burncastle *against* The CREDITORS of JAMES LOGAN of Hills.

JAMES LOGAN of Hills, having been tutor to Jo. Logan of Burncastle, finds Jo. Logan of Ardmanoch, cautioner to his pupil's curators, that he should, after count and reckoning, make payment of what he should be found to have intromitted with of the estate of Burncastle; and for his cautioner's security, he grants him a bond of relief in 1656, obliging himself to keep him scaithless, and to purchase sufficient discharges from his pupil and his curators, to himself and his said cautioner. Ardmanoch being distressed upon his cautionry, he pursues Hills the principal, upon his bond of relief; and charges him with horning; who suffers himself to be denounced, and lays year and day thereat; whereupon his escheat falls. Burncastle, the pupil, takes the gift of it, and pursues a general declarator thereof. It was alleged, no declarator could be granted upon the said gift, because they offered them to prove that the bond, and sums therein contained, whereupon the same proceeds, were either satisfied, paid, or the charge suspended before the denunciation, and so null, and needed not to be reduced.

Which allegiance the Lords repelled, and would not admit to stop the general declarator; but finding the summons relevant, admitted the same to his probation, which he instantly verified by production of his gift, and horning registered, with the executions thereof. Whereupon the Lords gave forth their decret of declarator; reserving always to the defenders all their lawful defences in the special declarator to follow thereupon.

Act. King's Advocate, and Mr. T. Lermonth.
Thoires.

Alt. Mr. Robert Trotter and
Signet MS. No. 27, folio 45.