

1665. *January 28.* ROBERT JOHNSTON and Jo. COWAN *against* ADAM COLQUHON.

ADAM COLQUHON, in Littlesauchie, is addebted to Robert Johnston there, L.93. By another bond, he owes to the said Robert, and Jo. Cowan, equally betwixt them, L.120. Thir bonds they register, and raise letters of poiding and horning thereupon. Which charge he suspends, because, *1mo*, As to the L.93 [he] had accepted of Alexander Glass of Sauchie, for his debtor therein, who likewise had offered him payment of the said money, which (after he had once accepted of him as debtor) he refused: this he was content to prove by the said Robert, charger, his oath. As to the said L.120, the same is for his duty of the crop, 1644; which, upon a sufficient discharge or re-delivery of his bond, he is content to pay them betwixt and Candlemas next; which cannot be denied him, seeing its good payment when a tenant pays his master once in the year, according as victual can be sold, and a price got therefore. At the calling of the suspension, it was eiked, *1mo*, That the letters ought to be suspended as to the L.120, because he had consigned the same in Sir W. Bruce, clerk to the bills, his hands. *2do*, Because the chargers refused to accept of the said sum of L.93, therefore the letters must be suspended as to the penalty of L.20.

To which reasons it was ANSWERED for the charger; and to the first, that he was content the said letters should be suspended as to the sum consigned, providing the charger get warrant to uplift the same. To the second, wherein its alleged that the chargers accepted Sauchie for their debtor, and yet refused when he offered them payment, the same is only probable by the chargers, their oaths; who being examined thereupon deponed *negativè*.

Whereupon the Lords suspended the letters as to the sum consigned, ordaining the same to be given up to the charger; find the letters orderly proceeded as to the sums not consigned, aye and while they be paid. Suspend for L.10 of the penalty; find them orderly proceeded *quoad* the other L.10.

Suspender, Sir Robert Sinclair. *Alt.* Alexander Munro.

Signet MS. No. 29, folio 46.

1665. *January 28.* ROBERT HAY *against* ALEXANDER HOME of Blackburn.

WILLIAM HOME of Suinewood by his bond grants him to have borrowed from Thomas Hay, tailor in the Canongate, seven score pounds in 1624. This bond is registered in 1641; and assigned by the said Thomas to his son Robert Hay, also tailor, in 1654; who now pursues Alexander Home of Blackburn, as son and heir to the said William, granter of the bond, and upon the other passive titles.

It is ALLEGED for the defender, that no process can be sustained upon the extract of the bond, because the same was registered after the decease of the said William, granter thereof, whereunto no procurator could have consented for him, he being dead; and so the same extract cannot prove, neither ought to be respected till the principal be produced. Which allegiance the Lords having considered, they ordained by their interlocutor, the pursuer to condescend upon admi-

nicles, (if he had any) for instructing of the verity of the said bond libelled. Conform to which ordinance, the pursuer's procurator condescended upon that he had an arrestment raised upon the said bond, which is a sufficient adminicle.

This condescension the Lords found not enough; therefore ordained the pursuer to produce the principal bond before sentence.

Which the pursuer doubting how he might do, at the next calling of this cause, the pursuer, in fortification of his said libel, offered him to prove by the defender his oath of verity *simpliciter*, that the debt acclaimed by the said extract was a true debt yet resting; and that it consisted in his perfect knowledge to be so; and that he had promised to meet with the pursuer to take order for payment thereof.

Whereunto it was ANSWERED for the said defender, that he was not obliged to give his oath as was craved, seeing the foresaid summons is not so libelled against him; and unless there were a new summons raised, he is not obliged to answer to these particulars the pursuer would refer to his oath.

Whereunto it was REPLIED, that it was in supplement of his summons, he was content to refer the said points to the defender his oath; *igitur*.

Which the Lords having considered, they, by the act of litiscontestation, find the said points probable by the defender his oath; and, therefore, assign the pursuer a day to warn him personally to compear personally to depone, both anent the passive titles and anent the truth of the debt referred to his oath. Upon which act letters are directed whereby he is summoned, personally apprehended; yet failyieing to compear, he was holden as confest, and decerned as heir to his father, *et aliis nominibus, titulis passivis et alternativis quibus supra*, to pay the said sum. This decret is twice in the register.

Act. Mr. Lawrence Oliphant. *Alt.* Mr. Rodger Hog.
Signet MS. No. 32, folio 46.

1665. *January 28.* ROBERT BAIRD and ALEXANDER ANDERSON *against*
SIR ROBERT HAMILTON of Silvertonhill.

SIR ROBERT HAMILTON of Silvertonhill, is charged by Alexander Anderson, merchant in Edinburgh, as cedent, and Robert Baird, bailie there, assignee, to pay L.931 addebted by his bond. He suspends upon that clause of the 62d of King Charles II. his first session anent debtors and creditors; whereby it is provided, that the Lords of Session shall have liberty to grant suspensions to such men as should use the benefit of the said act, provided they were charged for sums within L.1000, and that the Lords saw just reason why they should do the same. But so it is, the suspender has taken the benefit of the said act; the sum he is charged for is within L.1000, and yet it is utterly impossible for him, by reason of his other debts and cautionries, presently to obey this charge without a little breathing time; which the Lords, he hopes, will allow as a sufficient reason of suspension.

It being called, the Lords would not admit the same; but found the letters orderly proceeded, ay, and while the suspender should pay, &c.

Suspender, Mr. Jo. Harper. *Alt.* Mr. Thomas Baird.
3 *Signet MS. No. 33, folio 47.*