

suspender has no interest to propone the foresaid allegiance, seeing the pupil does not suspend; neither any warrant produced from the pupil.

All which being considered, the Lords find the letters orderly proceeded, ay and while the charge be obeyed.

Suspender, Sir Thomas Wallace, and James Abernethie. *Alt.* Mr. Thomas Lermonth.

Signet MS. No. 52, folio 57.

1665. *February 8.* GEORGE BAYNE *against* THOMAS HAMILTON.

JAMES LORD OGILVIE obliges him in 1659, to pay to Thomas Dewar in Dundee, 1000 merks. Thomas assigns Geo. Bayne, Merchant in Edinburgh, to this bond; whose wife, Elizabeth Colvill, knowing one Thomas Hamilton to be my Lord Ogilvie's Chamberlain, writes to him as *præposita negotiis mariti* in his absence, anent the 1000 merks addebted by my Lord. He by his missive in 1664, gives her a promise and assurance of payment at the next term. Upon this her husband Mr. Bayne pursues him to pay the same.

Its ALLEGED for the defender,—That neither is the letter directed to the pursuer, nor does it promise payment of the sum libelled to the pursuer.

To the which it was ANSWERED,—That it was, though directed to the pursuer's wife; and as to the promise opposed the missive.

The Lords decerned him to pay it, conform to his faithful promise, and missive letter in all points.

Act. Mr. Jo. Colvill. *Alt.* Mr. Thomas Baird.

Signet MS. No. 54, folio 57.

1665. *February 9.* AGNES ALEXANDER, Relict of THOMAS MARK, *against* THOMAS HADDOWAY.

AGNES ALEXANDER confirms herself executrix to Thomas Mark, wright in Wolmet, her spouse; and so pursues Thomas Haddoway before the Sheriff of Edinburgh, to redeliver to her a copper cauldron of twenty-four gallons, in as good case as the same was when he got it; or to pay 1001 merks as the price of it. The Sheriff decerns him to do it; whereupon she raises a precept, and causes charge him. He suspends the precept, *1mo*, because he is most unjustly decerned, seeing that Nicoll, brother, and cedent of the said cauldron to the pursuer's husband, being addebted to the suspender in L.65, &c. he pursued him before the Baron bailie of the Canongate, for the same. They decern Nicoll to pay it; by virtue of which decret, the suspender caused lawfully poind and apprise the said cauldron, as the instrument of poinding taken thereupon proves; after which, if Nicoll assigned the said cauldron to his brother Thomas, he knows not, but there was no intimation of any assignation made to him before the poinding. *2do*, Mr. Robert Scot, Sheriff-Clerk, behaved himself most partially and maliciously in this

matter, as if he had been judge, procurator, and party. *Item*, that he was charged, contrary to Mr. William Wallace, Sheriff-Depute, his order and express prohibition. *3tio*, This decret is null, because pronounced in time of vacance, without a dispensation; *Item*, because pronounced without probation, that either the said cauldron was only entrusted to the suspender by the said Nicoll, or that the said charger, his spouse, ever required this cauldron of him before his lawful poinding of it. On thir same reasons, a summons of reduction of the said decret is intended. At the calling of this suspension, the suspender insisted on the first reason. Whereunto it was answered, that the said poinding was null, because executed *extra territorium*, without the privilege of the Canongate. *2do*, He opponed the Sheriff's decret, wherein that same defence is proponed and repelled, in respect of a reply made thereto.

Which the Lords having considered, they found the letters orderly proceeded; and assoilyed from the reduction.

Suspender, Mr. Thomas Learmonth. *Alt.* Mr. Patrick Oliphant.

Signet MS. No. 58, folio 58.

1665. *February* 11. ALEXANDER CLUNIAS, Provost of Cromarty, *against*
WILLIAM CLUNIAS.

ALEXANDER CLUNIAS, Provost of Cromarty, by his bond obliges him to pay 600 merks to Alexander Clunias of Dunskeith. This bond Dunskeith leaves in legacy to William Clunias. Which William, pursuing therefor, in the English time, obtains decret; on which raising letters, the Provost suspends them in 1662. Yet protestation or a decret of suspension is recovered against him; on which he is of new charged. He suspends on reasons which, at the calling of it, are reformed thus. *1mo*, Ought to be suspended, because the decret whereupon it was raised was for null defence and not compearance. *2do*, Because he ought to have compensation for 1000 merks paid by the suspender, for Dunskeith the charger's cedent, to Mr. Alexander Ross, minister at Logie, to whom he was debtor in L.5000; and that in obedience to an arrestment laid on by the said Mr. Alexander, of the very same bond now charged for: which payment he was in *bona fide* to make, since it was before the said pretended legacy was left to the charger, at least before the intimation thereof. Now, if Dunskeith were living, and pursuing the suspender upon the foresaid bond left in legacy, the said compensation would be receivable against him; and therefore the same must now also be received against his legatar or assignee, especially seeing there is no other estate personal nor real belonging to the said defunct upon which the suspender may recur for his warrandice for the 600 merks bond. *Item*, at the best it is but a legacy which can have no place where there is debt: now the suspender is creditor to the defunct for his warrandice for the said 1000 merks paid out for him as is aforesaid. *3tio*, Dunskeith by his testament and latter will left the 600 merks to sundry persons, who have made over all their rights to one Alexander Manson; who, confirming himself executor dative and legatar to Dunskeith, is pursuing the suspender for payment making to him of the said 600 merks; till he therefore be discussed, this charge must be suspended. *4to*, They must be suspended *quoad* the annualrents and expenses of