

1665. *February 11.* GENERAL MAJOR THOMAS MORGAN *against* JAMES RIDDELL and his SON.

IN December 1660, James Riddell, merchant in Edinburgh, and his son, oblige them to pay to General Major Thomas Morgan L.436, 9s. 7d. Sterling. Ja. in 1661, pays L.200 Sterling of it; and, delaying to pay the rest, Morgan charges with horning. He suspends, that the ground of the granting of the said bond being a contract of copartnery betwixt Colonel Phinwick, Governor of the garrison of Leith, and this suspender, with the Captains Millar, Langlie, and Collison, for furnishing the said garrison with store of provision and victuals, there is addebted to him by the English soldiery, as he is able to instruct by counts fitted, by bills of soldiers, notes and receipts, by bonds or decreets, by missive letters under this charger, or General Monk's own hands, and many other evidents and instruments, above L.600 Sterling, whereof its like he will never get any payment or satisfaction, the soldiers now being all marched for England, and some of them for Portugal, &c.; and, therefore, though the Lords, in all justice and equity, grant him retention in his own hands, or compensation and abatement *de liquido in liquidum* of the said L.600, with the sum now charged for, yet he will be a most considerable loser. Then raises reduction of the said bond; at least craves new count and reckoning; and that after count, the said bond may be restricted to what should be found truly due, notwithstanding of a former count fitted, whereupon the suspender is alleged to have granted this bond now charged on, seeing the said count must be rectified, and many articles omitted therein, through haste of their march to England, (it being fitted that very day,) and threats made by the charger to pull down the suspender's house, to sell the timber thereof to make penny, &c.; which must now, in all reason, be allowed to him, the same being a public debt, and for the store of the citadel. *Item*, Craves the bond may be declared null, because violently extorted from him by the superior power of the then usurpers, Lambert and Monk, being then in difference, and all things being in confusion. And seeing the Lords of Session are pleased to revise the decreets given by the English Judges, sitting peaceably in judgment, notwithstanding of any homologation thereof; much more will they allow a review of the bond granted *metus causa, et vi majore*, a military power distressing the pursuer.

To this it was ANSWERED for the charger,—That this bond now charged on was after count fitted, wherein they offered them to prove that all the defalcations now craved by the suspender were allowed him. And for the missives produced, the same were civil recommendations, but no orders. *Item*, The suspender had homologated the bond by partial payment of it.

On this dispute the Lords named Stairs and Reddie auditors, to agree the parties if they could. No agreement following, the Lords, on the charger's supplication, remitted and recommended the cause to Kinglassie; to whom having given in their informations, he ordained them to be ready to dispute before the Lords, *in presentia*; when it was alleged for the charger, that the bond, homologated by the suspender was a private, pure bond of borrowed money. *Item*, That at the payment of the half of the said bond, the suspender offered the charger coal, salt, or other commodities, for the rest. *Item*, Was seeking to get money to borrow from sundry for paying thereof.

This allegiance the Lords found relevant to be proven by witnesses; and, therefore ordained the charger to have letters for summoning such witnesses

as he had condescended on; who compearing, deponed conform to the allegiance foresaid. After which the suspender's procurators, by supplication, craved letters to summon witnesses for proving the said bond was extorted *vi majore et metus causa*.

Whereto it was ANSWERED,—That no witnesses could be now led, seeing witnesses were already examined *ex officio*, and that not only on interrogatories made by the charger, but also by the suspender. *2do*, *Esto* it had been extorted, he has homologated it since in manner above specified. The Lords ordained him to condescend on the *vis major*. He said it was the authority of the usurpers and their threats.

ANSWERED,—Ought to be repelled, because the King was restored in May 1660, and this bond was not granted till December after. *2do*, When he voluntarily paid the L.200 in part of payment, and offered commodities for the rest, &c. the Parliament was sitting in Scotland, to whom, if any violence had been used, he might have made his address.

In respect of thir answers, the Lords repelled the reason founded on *vis major*, and found the letters orderly proceeded, ay and while the suspender should pay the sum charged for, with the annualrent thereof: suspended them *quoad* the failyie: assoilyied the charger from the reduction intended against him now and in all time coming. After pronouncing of which sentence, the suspender, by his supplication, craved Morgan's oath anent some articles wherefore he craved defalcation and allowance, the verity whereof he was content now to refer to the said charger his oath *simpliciter*. *Item*, In regard of his considerable loss, craved that he might be freed from paying annualrent. *Item*, May get a long term of payment of the principal sum, two or three years.

This supplication the Lords ordained the charger's procurators to see and to answer, who replied to the first demand, that it was unjust and unreasonable, since the articles, whereanent his oath is craved, are *hactenus judicata* fully debated before the auditor; before whom the charger offering to depone, they refused, so that they cannot crave it now. As for the other two demands, they are merely made to obviate the charger's petition he was to give in for the Lords modification of his expenses.

After which answer, the Lords ordained James Riddell to give his oath *de calumnia*, whether he had just reason to seek Morgan's oath in these particulars, yea or no. *Item*, Ordained that he having given the same, a commission should be granted for taking Morgan's oath; who, if he deponed *negativè*, then condemned the suspender *in maximas impensas*.

After which interlocutor, James Riddell refusing to give his oath of calumny, the Lords adhered to their former interlocutor, and found the letters orderly proceeded *ut supra*.

*Suspender*, Sir George Lockhart, Mr. William Maxwell, Mr. Thomas Lermonth.

*Alt.* Wallace and Cheap.

*Signet MS. No. 61, folio 59.*