

the burgh, in regard his lands must bear common burdens as other lands do within the burgh, whether he reside or no.

After which dispute, the Lords found the letters orderly proceeded, ay and while the suspenders entered the charger to the said tenement by infestment, &c.; the charger always paying to the suspenders the duty used and wont.

Suspender, Mr. Thomas Baird.

Alt. Sir Geo. M'Kenzie.

Signet MS. No. 76, folio 62.

1665. *February* 16. SIR MUNGO STIRLING of Glorat, and JAMES EARL of CALLENDAR *against* JAMES VISCOUNT of KILSITH.

SIR MUNGO STIRLING of Glorat, as principal, and Ja. Earl of Callendar, as cautioner, oblige them to pay to Sir William Livinstone of Kilsith, \$1,000 merks in 1645. Livinstone assigns this bond to Andrew Ramsay, his servitor, who thereupon comprises the lands of Glorat, lying within the Sheriffdom of Stirling, in 1655. Then by his retrocession, the said Andrew repones Kilsith in his former right and place. All this while, the annual-rents of the said principal sum comprised for are paid punctually. Then Glorat, intending an order of redemption, raises letters of premonition of James now Viscount of Kilsith, as heir served and retoured to his father, and his tutors and curators, for their interests, to compear, &c. and to accept and receive the sums of money contained in the process of apprising; and thereupon to acknowledge and grant the said lands to be lawfully and duly loosed, outquit, and redeemed. At the day the order being used, instruments of redemption are thereupon taken. Then Glorat and Callendar intent summons of declarator of redemption of the said lands; *item*, of the property of the same, charging them to compear, and to hear and see themselves decerned, to resign, renounce, and upgive the said lands, as lawfully redeemed; *item*, to make, subscribe, and deliver valid grants and renunciations of the redemption; *item*, to deliver up to the pursuers the process of apprising, with the grounds thereof; *item*, with all that has followed thereupon; *item*, to hear and see it found and declared, that the good and undoubted right and property of the said lands redeemed belongs to the pursuer allenary. At the calling of this action, the procurator for the pursuer declared that he passed *simpliciter* from that part of the summons whereby he craved decret of declarator of the property of the said lands; *item*, that he insisted only for declarator of redemption of the said lands; which decret he declared should be no acknowledgment, allowance, approbation, or strengthening of any of Stirling of Glorat his infestments or rights to the same lands; but that he and Kilsith should be in that very same state, case, and condition, as to their respective claims and interests in the said lands that they were at the leading of the said apprising, &c.

Whereunto it was ANSWERED for the defender, that the order of redemption cannot be sustained; neither can the lands be declared orderly redeemed, until first the pursuer consign and offer the principal sum and annual-rents contained in the bonds and apprising, but likewise the penalties, sheriff fees, and expenses debursed in leading the apprising, and in passing and expeding the infestment thereon; which they have not done. Whereupon the pursuers gave in a supplication to

the Lords, humbly craving they might be assoilyed and freed from the penalties and Sheriff fees. *1mo*, Because they craved compensation for 800 merks of penalties, contained in two bonds granted by Kilsith, which the pursuers, by satisfying them, had acquired right to. *2do*, Callendar, as being forfault by the usurper, might have taken the benefit of the act 1661, anent forfaulted persons their not paying of eight years annual-rent, the benefit of which act the Earl would not take; and therefore, &c. *Item*, offered, what expenses should be given in in account, to pay the same at the modification of the Lords. Upon which supplication the Lords ordained the defender to give in an account of his disbursements; who gave in the count following; for registration of two bonds, one of them registrate by way action, L.20; for raising of horning thereon, and getting them signet, L.5, 16s.; for using of requisition upon one of the said bonds, L.5, 16s.; for raising letters of apprising, signet to them, executions thereof, claim, acts of court, decret of apprising, instrument money, house dues, Sheriff fee, allowance of it, raising of letters to charge the superior thereon, &c. L.200; for writing a charter, L.8, 13s.; for taking seisine thereon, and its registration, L.30; for a disposition made by Andrew Ramsay to Kilsith, L.30; for an instrument of resignation *ad remanentiam* L.30; *summa totalis*, L.306, 16s.

Upon which account the Lords found the lands orderly redeemed, &c. the said L.306, 16s. being also paid with the rest; *item*, declared and ordained conform to the desire of the summons, unless in so far as the pursuer passed therefrom.

Act. Mr. Lawrence Oliphant. *Alt.* Mr. Jo. Cunynghame and William Braidie.
Signet MS. No. 78, folio 62.

1665. *February 17.* MARION BROWN, relict of Jo. Wauchop, and WAUCHOPS their Children, *against* JO. WAUCHOP of Gleghorne.

MARION BROWN, relict of Jo. Wauchop, and the children of the marriage betwixt them, charge Jo. Wauchop of Gleghorne, for payment making, (conform to his bond granted in 1664 to the said John,) of 400 merks. This charge he suspends on thir reasons; *1mo*, That formerly having made an offer of the said 400 merks, he found the chargers incapable to grant him sufficient and valid discharges therefore, in respect the chargers had denuded themselves of the said bond and sums of money therein contained, by assignation made in favour of Mr. Robert Clerk, writer in Edinburgh. Notwithstanding whereof, he only minding the chargers' good, granted them new bond for the 400 merks, and took her bond for delivering and obtaining to him of the former bond, given up to Mr. Clerk, with the assignation thereof, or at least his sufficient discharge thereof; nothing of which the chargers have yet done. Therefore, (lest he should be liable in double payment,) he craves the letters may be suspended ay and while the other bond be fulfilled. *Item*, because the said Mr. Robert Clerk is dead, he craves an extract of his testament; *item*, that the said sum may be confirmed and discharged by his lawful executors. *2do*, No execution can pass on the said bond, charged on at the children's instance; because, by the tenor of the bond, the same is only payable to them at their mother's decease; and though their mother were deceased, they ought to be authorized, being all minors, with tutors and curators, before he