simpliciter, and assigned the day of to his procurators to produce him, with certification, &c. who protested for a qualified oath, and the pursuer's procurators in the contrary. At the which term the defender compearing, he deponed *negativè*, that he got no money from the States to pay the foresaid quarters, and that he had no other quarters but with the said Margaret, and that he never promised her payment thereof; but thinks if he had gotten money to pay, that he was in duty obliged to have done it; and that he never knew any of the officers there at that time pay any money to them on whom they were quartered, for their quarters, &c.

Which oath and deposition the Lords having advised, they found thereby the said Mr. John Bonar was no way liable, nor subject in payment of the said sum acclaimed by the pursuers from him, as being noways their debtor nor their cedent's; and therefore *simpliciter* assoilyie him from the haill points of the summons, &c. and decern and declare him free and quite from the payment of the sum acclaimed, in all time coming.

Advocates' MS. No. 4, *folio* 69.

1669. *December.* LAUDER *against* DAVID WATSON and OTHERS.

IN the action of exhibition raised by my Father against Mr. David Watson, (which was called in December 1669 before my Lord Stair,) whereby was craved, that the defender might be decerned to exhibit the decreet of apprising led at the instance of the E. of Ethil against the Lord Ramsay, with the blank translation thereof, and other writs relative thereto; to the effect they might lay in the process of reduction and improbation intended by my father against the same, till the final conclusion thereof: the pursuer's interest, whereby he called for the said writs, was libelled to be as a lawful creditor to my Lord Ramsay, and as having apprised his lands and intented improbation of the writs desired to be exhibited.

My Lord Stair would not sustain the interest, because it was a thing altogether unheard of, to call for exhibition of writs for any other effect except either it were for inspection *ad deliberandum* at the apparent heir's instance, or for delivery at the owner's. *Item*, If exhibitions of this nature were sustained, then should none ever wait upon the ordinary terms of improbation their running, but would raise exhibition against the havers, which is against form. *3tio*, No man can call for exhibition of writs except they be such as are conceived in his favours; and noways for writs that are in his prejudice, as is here. And hence my Lord Stair by his interlocutor, found, That if we would mend our libel thus, that we called for exhibition of that apprising, as led and deduced to the use and behoof of the Lord Ramsay, the common debtor, and which so behoved to accresce to the pursuer, who had comprised not only the right that then stood in the person of the Lord Ramsay, but also all supervenient rights whatsoever (as this apprising was,) that might become in his person; that then he would sustain the libel.

Item, Found that it would be more proper to crave such an exhibition by a bill to the Lords *in præsentia* than by an ordinary action. Though it may be reasoned, that having refused the desire of the exhibition, being pursued by way of an

ordinary action, *multo magis* ought it to be refused by way of a bill, which is most summary. Yet the reason of the difference I suppose lies here, that in the matter of bills the Lords exerce much of their *officium nobile*, by which they may certainly command the defender to exhibit these writs to the clerk of the improbation, there to lay, &c. whereas in ordinary actions they are astricted to the ordinary forms which they may not transgress.

Advocates' MS. No. 5, folio 70.

1669. *December 24.* SEMPLE *against* WALKER.

IN the action of suspension, Semple *against* Walker, called about that same time, my Lord Stair turned a decreet of the Sheriff of Lanerk into a libel, because it bore only that the defender being twice lawfully summoned to give his oath upon the libel compeared not, and so was holden *pro confesso;* and did not bear that he was personally apprehended: whereupon we were necessitated to refer the same of new again to the suspender's oath. Whereas it might have been alleged, that this decreet ought as well to be sustained as they sustain a horning bearing delivery of a copy to the party, though it bear not that he was personally apprehended.

Vide *infra November* 1676, *Findlay, No.* 504. *Dury, 22d July* 1626, *Stewart* against *Ahanay.*

Advocates' MS. No. 6, *folio* 70.

1670. *February.* GEORGE MOSMAN *against* ADAM and ANDREW BELLS of Belford.

IN the suspension Adam and Andrew Bells of Belford *against* George Mosman, this reason of suspension was repelled, that the charger's right being a right flowing by translation from Elizabeth Cunyghame, who had an assignation to the bond charged upon, her assignation was never intimated to the suspenders in the cedent's lifetime, and so could not produce summary action by a charge; but ought to have been pursued upon, *via ordinaria,* in regard that the assignation was intimated to James Bell, (who was principal debtor in the bond,) before the cedent's decease, which was found a sufficient intimation likewise to the cautioners. Vide *Dury, 23d January,* 1624, *Stevenson and the Laird of Craigmillar.* Vide *Cujacium, Codice, De duobus reis.* See 28*th November,* 1678, *Reid and Bruce of Newton.*

The second reason of suspension was found relevant, viz. that the suspenders were not *in tuto* to make payment of the sum to the charger, because the charger's author's right was questioned, and under reduction at the instance of Quintene Findlay and his wife, as nearest of kin to John Lithgow, granter of the assignation: the reason of reduction was death-bed.

Whereto it was REPLIED,—That this bond of Belford's was a bond which might lawfully be assigned on death-bed, because, in the body of it, it bears a dispensa-