

No. 36. tract passed between the pursuer and defender, thereafter they had transacted otherwise ;—this reason being found relevant, and a day assigned to the suspender for proving thereof, he failed therein, and the term was circumduced, and the letters found orderly proceeded. Afterwards Glen suspended upon the same reason again, and produced the said minute. The Lords would not receive it, in respect he had suffered the term in the first suspension to be circumduced against him.

*Spottiswood, p. 324.*

1632. July 10.

HUME *against* BOWMAKER.

No. 37.

A fact which could not be ascertained in the first suspension, admitted to discussion in a second.

One Hume having acquired the right of the life-rent of Bowmaker, by his annual rebellion, and after general declarator, having obtained decret of removing against him ; which being suspended upon a reason, viz. That the donatar, the time of the gift granting, had granted a bond to the Earl of Mar then Thesaurer, to use the same by his advice, for the good of the rebel's creditors ; and for not verifying of this reason, the letters were found orderly proceeded ; and thereafter a new suspension being raised upon this same reason, and the bond, with the Earl of Mar's declaration, how the donatar should use his gift, being produced for verifying thereof ; it was questioned by the donatar, that after decret upon the first suspension, against the same reason for not verifying thereof, the verification now ought not to be respected, nor received, otherwise there would be no end of plea ; for if, at the second suspension, the verification were receivable, it might be as well received in the third or fourth, and so *in infinitum* ; and if decret were given for not probation of an exception admitted, that decret could never be taken away by production of any probation thereafter, in any second instance, far less ought it to be received by suspension after decret once given, and thereafter another decret given upon suspension, finding the letters orderly proceeded, for not verification. The Lords notwithstanding found, that they would receive the verification in this second suspension, albeit it was not produced in the first, especially seeing it was not the suspender's own bond, but was made by a third person to the Thesaurer, and that it depended upon the Thesaurer's declaration, which was only made since the first suspension was discussed, and which is not easy to the parties always to obtain, but must be attended while he pleased to give it ; and the Lords found this declaration now produced, made by the Earl of Mar, being then Thesaurer, ought not to be respected, seeing the back bond was granted to the Earl of Mar, being then Thesaurer, and he ceased to be in that office the time of the declaration, and long before, and so that it was not proper to him to declare, as Earl of Mar, how that gift should be used, by virtue of the back bond, the power whereof to declare was only proper to the Thesaurer, being in office for the time, and not to the person receiver of the bond, if he should be out of office when he declared ; for the power of such bonds followed the suc-

cessors of the office, and was not otherwise inherent in the person of the receiver being become a private person; and therefore the Lords yet assigned a competent day to the suspender, to produce the present Thesaurer's declaration, anent the said back-bond and escheat, that thereafter the Lords might consider thereof, and discuss the reason of suspension, and verification thereof.

Act. Craig.

Clerk, Gibson.

Durie, p. 642.

No. 37.

S E C T. VI.

Expenses in a Suspension.—A Party becomes personally liable by suspending, though not formerly.

1632. November 28. ROBERTSON against GREIG.

No. 38.

Greig pursues before the Sheriff of Perth, one Robertson, for the mails and duties of a room alleged pertaining to the said Greig in life-rent, whereupon the said Greig obtained decret *in foro contradictorio*. Robertson suspends, alleging, that this decret was wrongously given out against him, because his father was heritably infeft in the said land, to the which infeftment the said pursuer had consented. It was answered, Ought to be repelled in respect of the decret given *in foro contradictorio*, where this defence was competent and omitted. It was replied, That if any procurator compeared before the Sheriff, he had no warrant of the party, by reason the suspender's right was so clear, and nothing would be alleged in the contrary, and that the parties were poor folks. The Lords would not put the suspenders to a reduction, but suspended the letters simply, and ordained to give to the charger 100 merks of expenses, and to give action against the procurator, if he compeared, but a warran. This was thought hard and against form.

*Auchinleck MS. p. 228.*

1634. November 14. M'NAUGHTON against M'NAUGHTON.

No. 39.

A decret of poinding the ground being suspended by the heritor, a singular successor not personally liable, and the suspension discussed in the charger's favours; the Lords found, That the suspender was personally liable to pay all