

warrandice and relief, whereupon the suspender is charged : notwithstanding it was alleged, in fortification of the reason, that John More received the said debt, being 1,000 merks, and that my Lord Innerpeffer, in the pursuit of declarator or some such process, had taken some dealing in the matter ; and therefore the suspender urged that they might be examined *saltem ex officio*. Which the Lords refused.

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1649. December 6. The TENANTS of RIPPET *against* The EARL of HOME and MARY JOHNSTOUNE.

IN the suspension of double pounding at the instance of the Tenants of Rippet against the Earl of Home, and Mary Johnstoune, relict of Mr James Thomsons,—the Lords preferred the said Mary *in judicio possessorio* ; because, by virtue of her contract of marriage, she and her umquhile husband had been in possession as having right from Archibald Thomsons, her father-in-law, and John Stewart of Coldinghame ; likeas, in a prior suspension, the letters were found orderly proceeded : the Earl of Home, his procurators, having produced nothing. And suppose having produced now, they did allege that, by a decret in the 1643, the said Earl of Home was reponed to all the teinds of Coldinghame, for satisfaction of £300 sterling ; in payment whereof the said John Stewart, and others obliged, had failyied : the said Archibald Thomson being called, but not his son nor good-daughter, who were in possession.

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1649. December 6. JOHN HORSBURGHE *against* JOHN MAXWELL.

MR John Horsburgh pursuing, by bill, John Maxwell before the parliament, is remitted to the session : where the said Mr John Horsburgh, having delivered to the said John some Irish bonds, addebted by the folks of Duntreath to his umquhile father, craves redelivery of the bonds, or else that he pay him the sums contained therein ; but it was excepted, that he, being an advocate, was not tied to prove redelivery, affirming that he had given them back to him. It was replied that he took a factory for the pursuit, and so was not in the case of an advocate. He duplied that it was only a procuration taken from the said Mr John, as use is, because he was a resider in England. The Lords examined witnesses *ex officio*, and found it a factory ; and, having taken the pursuer's oath whether or not he had gotten back the papers, he denied the same ; whereupon the said John Maxwell, defender, was decerned to deliver those bonds, or else to make them up by proving the tenour thereof, and make them as effectual, as concerning the responsality of the parties, as if they were presently redelivered ; and, for that purpose, gave him three whole sessions after this, to insist thereon. And herein it was disputed amongst the Lords, anent the probation of the tenour of the bond, how difficile it might be ; both in respect of discharges, and in respect of the common rule of law, that *instrumentum nominis apud debitorem repertum presumitur rescriptum et solutum*.

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