

soalls, Mr. Mungo Murray of Carlaverock, and Patrick Murray of Keillor, by their bond, dated 1660, grant them to have borrowed from Jo. Hamilton, of Bangour, the sum of 4000 merks, which they oblige them to repay to him, and Marion Hamilton, his spouse, her liferent use thereof; and, for his surer repayment, they oblige them to infest and sease him in an annualrent effeiring to the said sum, which shall ever be redeemable on payment of the said sum: *item*, declared that if Bangour, and his foresaids, choose rather to uplift their money than to retain the said security, in that case they bind and oblige them to make good and thankful payment thereof, without any premonition or requisition to that effect. Bangour in 1663 dies. His son Jo. (Cut-the-wind) serves and retours himself heir to his father; then, with consent of his mother, assigns the bond to Ja. Hamilton, merchant in Edinburgh, who summons the parties before-named, granters of the bond, to hear and see them decerned to make payment to him of the said sum. The Lords decern conform to the desire of the summons; because the defenders, compearing by their procurators, alleged no reasonable cause in the contrary; *item*, because the Lords saw the said bond, assignation, and retour.

*Act.* Mr. Thomas Lermonth. *Alt.* Mr. Robert Sinclair, John Harper, and Nathaniel Fyfe.

*Signet MS. No. 34, folio 11.*

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1663. *December 12.* ANDREW KER *against* The MAGISTRATES of COUPER.

THERE is a contract, in October, 1652, made betwixt Sir Ja. Melvill of Hallhill and Bruntiland, on the one part; and George Jameson, provost of Couper in Fyfe, with the remainant council thereof, taking the burden upon them for the body and community of the said burgh: wherein Hallhill sets to the town of Couper a tack of the teind sheaves and burgh acres of the corn-field land about the town; wherefore they oblige them in payment yearly to the said Sir Ja. of L.500. *In anno* 1654, Sir Ja. assigns and disposes this contract to Mr. Andrew Ker, advocate. Mr. Andrew, by his translation, disposes to Mr. Andrew Ker, clerk of Linlithgow; who, charging the magistrates of Couper therefore, they suspend, upon multiplepointing; the same sum being also arrested in their hands, at the instance of Sir. Jo. Weymes of Bogie, Sir Robert Farquhar of Monnie, Andrew Balfour, and James Melvill, burgesses in Edinburgh; and consigns in Mr. Thomas Hay, clerk to the process, his hands, the sum of L.800, addebted; which they are most willing be made forthcoming to any the Lords shall find to have best right thereto, upon their sufficient acquittance and discharge thereof; and providing the Lords ordain all the rest to desist from troubling the suspenders for payment thereof. Compear, on the calling of this suspension, the charger's procurators; and produce for them, the registrate contract, the assignation, and translation thereof. Compear procurators for the arresters, and produced their discharge of the said arrestment, wherein they declared they passed from their arrestment, in favours of the charger.

In respect whereof, the Lords decerned the said Mr. Andrew, charger, to be preferred to the sum consigned, (whereupon Mr. Thomas Hay de-

livered the same unto him,) he granting to the town of Couper a sufficient discharge thereof; which he did. Assoilyie the said town from the charge, and so suspend the letters *simpliciter*, as to the L.800 consigned. Find them orderly proceeded, so that they be put to farther execution for L.34, yet resting, aye and while the same be paid. Finally, discharge the whole remaining persons from troubling the said town for payment of the said sum of L.834; and that, in respect of their consent and discharge above-written.

*Susp.* Mr. David Balfour. *Alt.* Mr. George Norvell, Pat. Ranken, Mr. Robert Trotter, Ja. Cheap, Roger Hog.

*Signet MS. No. 35, folio 11.*

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1663. *December 12.* ALEXANDER GIBSONE, HELEN FLEMING, &c. *against* SIR PATRICK MAXWELL, of Newark.

SIR PAT. MAXWELL, of Newark, by his bond *in anno* 1649, grants him to have borrowed and received from Elisabeth Fleming, relict of Malcolm Fleming, merchant burghess in Edenburgh, 12000 merks; and binds and obliges him to repay the same to her, for the use and behoof of her four daughters, Elizab. Helen, Janet, and Agnes Flemings, as their tutrix, each of them their proportional share of 3000 merks. Elisabeth, the mother, marries Sir Jo. Gibsone, elder of Pentland. Helen, one of her daughters, marries his son, Mr. Alexander Gibsone. Elisabeth is married to Robert Baird, and Agnes to Dr. David Hay. Mr. Alexander Gibsone charges Newark to make payment to him of the sum of 3000 merks, as the equal part of the said principal sum falling to his spouse. He suspends, on this reason, that there was a transaction betwixt William, Lord Cochran, and the suspender, whereby Cochran did engage to satisfy the said principal sum, and the whole byrun annuals thereof: according to which agreement, he paid Bailie Baird and Dr. Hay, whatsoever they could claim by their said wives; as their discharges thereof produced will verify. Mr. Alexander Gibsone he also pays: only in his discharge he acknowledges the receipt of 3110 merks, in part of payment of his wife's proportion; but prejudice to him to crave what further, after count and reckoning, should be found to him to be due. Whereupon, the suspender intented action, both against Cochran and Mr. Alexander, of count and reckoning, to the effect he might have known if any thing was yet resting of the said principal sum, yea or not: and, therefore, this being depending; till such time it be put to a close, all execution at Mr. Alexander's instance ought to be superseded. At the calling of this suspension, Mr. Alexander, by his procurator, gave in a declared charge, declaring that of the whole 3000 merks charged for, he finds now only L.440 resting owing, and all the rest to be satisfied, so that he restricts his charge to the said L.440. It being alleged by the suspender's advocate that he behoved to count and reckon, it was answered, that no count and reckoning could be granted, seeing the charge is liquid, unless the suspender would allege payment of the sums charged for; which payment in a suspension must be verified *instanter*, either by a discharge *vel juramento* of the charger.