

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.

REPLIED for the suspender,—That the said answer ought to be repelled, because Mr. Alexander, in his discharge, offers to count. My Lord Cochran's procurator declares he refused to count. All which being considered by the Lords, they suspended *simpliciter* the letters for the whole sums charged for, except allenary the said L.440 given up in the declared charge, for which they find the letters orderly proceeded, and ordain them to have further execution, aye and while the same be paid.

*Susp.* Mr. William Maxwell. *Alt.* Mr. George Mackenzie, Lord Cochran, Sir Thomas Wallace.

*Signet MS. No. 36, folio 11.*

1663. *December 16.* HUGH WEIR *against* THOMAS GRAY.

In July, 1593, there is a contract of alienation made betwixt William Levinstone, of Jerreswood, as patron to the chaplainry of Lady Alverage, lying within the Kirk of the town of Lanerk, called St. Nicolas' Chapel, with consent of Jo. Levinstone, incumbent chaplain at the time; and Ja. Gray, notary, burghess of Lanerk; whereby the said William disposes the said chaplainry, with the houses and barn-yard adjacent thereto, as also the acre of land called the Lady acre, with half an acre called the Bonnet or Typsett, to the said Ja. to be holden of him as superior for payment of 40s. Scots money, in name of feu-farm, being the retoured duty thereof, yearly. Sir William Lockhart, of Carstares, he acquires the superiority of the said lands, and disposes it to Jo. Hushillwood, Bailie of Lanerk. Ja. Gray, the vassal, dies, *in anno* 1643; whereupon the tenement falls in non-entry in Hushillwood, as superior, his hands. He assigns it to one Hugh Weir, maltman there: who, as donator, and by virtue of the gift and disposition made to him, raises a summons of declarator against Mr. Thomas Gray, writer in Edinburgh, oy to the said Ja. Gray; to hear and see it found and declared by the Lords, that the said tenements in Lanerk have been in non-entry since 1643, and are, and will be still in all time coming, aye and while the lawful entry of an heir of perfect age: *Item*, to see it declared that the whole farms, mails, profits, and duties of the said lands, have appertained, for the whole space foresaid, to the said superior, John Hushillwood, and, consequently, to this pursuer as his donatar: *item*, that they will appertain to them in all time coming, aye and while the lawful entry, &c. with the relief of the same, when it shall happen; the retoured duty, owing for twenty years together, amounting to L.40: *Item*, the farms of the said lands being set at their true avail, will extend to L.48 yearly; as a testificate, declaration, or acknowledgment of the defenders, produced by the pursuer, bears: *item*, to hear it found and declared, that seeing this pursuer has good and undoubted right to call for the mails and duties of the said lands, for all the time they have been in non-entry; *item*, for the feu farm thereof; that messengers at arms be directed to poind, apprise, and distrenyie the readiest goods and gear that shall be found upon the ground of the said lands, for the said mails and duties owing; and failyieing of moveable goods and gear streinyable, to apprise the ground-right and