

randice of the said disposition ; and so he might have tint thereby. And for this cause, *de facto*, did he repel that unanswerable exception, grounded on the tack, contrary to all law and reason, and contrary to the daily practise of the Lords in such cases. And as the said reason would have been a good cause of advocation, so also must it be of suspension ; and, therefore, the decret, as null in itself, must be turned in a libel. *3tio*, Albeit the said decret had been given by a competent and unconcerned judge, (as it was not,) yet it ought to be suspended, both upon iniquity, and as null in itself, and wanting lawful probation, in so far as the fore-said unanswerable defence was repelled : for although it was answered, that he and his predecessors had passed from this tack, by their payment of a greater tack-duty than was contained therein, which was no sufficient nor relevant reply to take away the said tack, but the most it would infer is, the heightening of the duty ; *2do*, This cannot be proponed against the suspender ; seeing his father died only in April last, and he was warned to flit at Pasche, so that the term of payment not being yet come, he has not paid any mails or duties ; and, therefore, the said decret is null, not proceeding on any probation. *4to*, It is to be remembered that the suspender has reduction of the said decret, upon reasons coincident with thir, depending.

To all which it was answered by Waughton's procurators, that the letters at his instance against the said Hewat ought to be found orderly proceeded, and he assoilyied from the said summons of reduction intended against him ; because the self same reasons insisted upon now, in the suspension and reduction, were all proponed before the obtaining of the said decret, and repelled.

All which allegeances being well and ripely considered by the Lords, they found that reason of suspension relevant, that there was a tack of the said lands standing in the person of the said Ja. Hewat, suspender, granted by the said Earl of Home to him, before any right made by the said Earl to Waughton, for years yet to run, unexpired ; and, therefore, assigned a day for proving the same. Which they failyieing to do, the term was circumduced against the defender ; and decret given forth, ordaining him to remove, otherwise the letters of horning to be put to farther execution against him. *Item*, assoilyie Waughton *simpliciter* from the action of reduction intended against him.

Act. Mr. Jo. Eleis. *Alt. charger*, Mr. David Dunmuire.

Signet MS. No. 38, folio 12.

1663. *December 16.* WILLIAM BAXTER and WILLIAM BLAIKWOOD *against* ANDREW LAMB of Southcarrie.

MR. ANDREW LAMB, Bishop of Galloway, at London, in November, 1623, borrows from William Kilmennie, merchant, residenter at London, 500 merks Scots ; and because it was by Patrick Baxter, merchant-burgess and bailie in Edinburgh, his order, he got it, he grants him his bond of the same. In 1646, Patrick Baxter dies, and his son, William Baxter, serves and retours himself heir to his father ; then charges Andrew Lamb of Southcarrie, oy and apparent heir to the said Andrew, Bishop of Galloway, granter of the bond, to enter heir to his fa-

ther and grandfather, within forty days, &c. ; then pursues him, *in anno* 1658, as lawfully charged to enter heir, to hear and see decret given against him, decerning him to make payment of the said sum to the pursuer. Compears Mr. Andrew Gilmor, as procurator for the pursuer, and declares, that he insists against the said [defender,] as lawfully charged to enter heir to his goodsire and father ; and that, *pro loco et tempore*, he passes from the remaining passive titles libelled ; as successor *titulo lucrativo post*, &c. as executor, as behaving as heir, &c. ; and for instructing the summons, produces William Baxter's service to his father ; then the bond ; then the letters of general charge.

Compears Mr. Peter Wedderburne, as procurator for the defender, and ALLEGES, he cannot be convened as lawfully charged to enter heir ; because he was content to renounce to be heir to them, with all benefit that might accresce to him thereby, in favours of the pursuer. Which exception the commissioners for administration of justice finding relevant, they assign him a day to produce a valid renunciation in favours of the pursuer ; or with certification, that if he failyied, the term should be circumduced against him, and decret given conform to the desire of the summons. At the term assigned, Mr. Peter produces a renunciation subscribed by the said Andrew Lamb. It was objected, that it could not be respected as valid, because not subscribed by his curators, he being a minor. For which reason the said commissioners finding it not valid, they circumduced the term, and gave out a decret in favours of the pursuer. Conform to this decret, in 1662, William Baxter, and William Blaikwood, as assignees constituted thereto by the said W. Baxter, charge the said Andrew Lamb of Southcarrie, to pay the debt contained in the said decret. This charge he suspends, on this reason, that he has consigned in Sir William Bruce, clerk to the bills, his hand, a sufficient and valid renunciation, subscribed by him and his curators ; in respect whereof, no execution can follow on that pretended decret. *2do*, To show how ready and willing he is to procure to the said chargers, payment of their said debt, he has obtained a declaration under Jo. Ouchterlonie of Guind, his hand, declaring, That though he has decret of adjudication of the lands of Southcarrie, for sums addebted to him ; and that the said William Baxter has not done diligence against the lands of Southcarrie, by craving adjudication of the same, within year and day of his adjudication, as is prescribed by the act of parliament betwixt debtor and creditor ; yet he is content to take him *pari passu* with him, effeiring to his sum. It is subscribed by two witnesses. Which two reasons of suspension, to wit, the renunciation produced, with the said Ouchterlonie's declaration, the Lords having well considered, they turn the decret *in anno* 1658 in a libel, and assoilyie the said Andrew Lamb (upon the protestation of his procurators to that effect) from the hail points and articles thereof. Yet decern him to obey the said letters (upon protestation of the pursuers' procurators to that effect) *cognitionis causa tantum* ; to the effect, the chargers may have action and process against *hereditatem jacentem et bona mobilia*, and whatsoever other goods and gear would have appertained to the said suspender, in case he had not renounced to have been heir. *Item*, Ordain the said Ouchterlonie to take in thir chargers with him *pari passu*, conform to his declaration. *Item*, Reserve to the suspender, his action of reduction, in so far as they have sustained the letters against him.

And whereas it was ALLEGED by the charger's advocate, that to produce a

valid renunciation now, was not time, seeing *res non erat amplius integra*, by reason of decreets recovered against the suspender: it was duplied, that they opposed the former reason of suspension; and that the charger, by their consent, should have all real execution he pleased.

Susp. Sir Geo. Lockart, Mr. George Mackenzie. *Alt.* Mr. Rodger Hog.
Signet MS. No. 39, folio 13.

1663. *December 16.* ALEXANDER ANDERSON *against* JO. CHALMER of Collonach, and JO. CHALMERS, Minister at Gairtley.

ALEXANDER COLLIE, sometime in Langmuire, now in Scaitmuir, by his bond, obliges him to pay to Patrick Ferguson, burgess in Aberdein, the sum of L.53 yearly, for the years 1627, 1628, for his own entertainment; *item*, forty merks for his son's entertainment in 29, 30, 31, 32, 33, 34, &c. On this registrate bond, Patrick charges him, *in anno* 1656, with letters of horning. After, he is orderly denounced rebel, and lies year and day at the horn, unrelaxed; whereby, conform to the laws and practise of this realm, and privilege of the crown, his liferent-estate fell in the king's hands, and became in his gift and disposition: who, by a letter of gift under the privy seal, disposed the same to Captain William Barclay of Auchvedy: who immediately intents summons of declarator of the escheat, against the said Alexander Collie; summoning him to compear, and hear it found and declared by the Lords, that he was orderly denounced; that he lay year and day under the said process of horning; that therethrough, all his goods, escheatable, as well moveable as immoveable, that pertained to him, the time of the said denunciation, or that accresced to him since syne, with the liferent escheat of all his lands, heritages, &c. were at the king's gift, and so do appertain to the said pursuer as donatar.

The Lords decerned, conform to the desire of the summons. This letter of gift, with the decret of declarator thereupon, the said Captain assigns to Mr. Alexander Anderson, servitor to Sir Jo. Fletcher, king's advocate; who understanding that Mr. Jo. Chalmer of Collonach, as principal, and Mr. Jo. Chalmers, minister at Gairtley, as cautioner, had granted them to have borrowed from the said Alexander Collie, 1000 merks, and obliged themselves to the repayment thereof; he, by virtue of his assignation to the foresaid gift and decret of declarator, having good and undoubted right to call for all debts or sums of money owing to the party denounced, pursues the said Collonach, principal, and Mr. William Chalmers, as son and heir, at least executor confirmed, to the deceased Mr. Jo. minister at Gairtley, for payment making of the said 1000 merks to him. For instructing the points of the forementioned summons, there is produced by the pursuer, the king's gift, with the decret of declarator; then his assignation he has thereto; then a decret of suspension purchased by the said Collie, against the said Chambers, finding the letters orderly proceeded against them, and ordaining them to have effect, ay and while the suspenders should make [payment] of the sum of 800 merks, which the Lords found really to be due, assoilyeing them from