

sion ; as even now, *de facto*, there is a process of count and reckoning depending at the instance of Sir William Dick's other creditors, against this suspender, wherein they refuse to allow him the sum of money already paid out by him, for building of the said church : and, therefore, till such time as the Lords determine in that, the suspender can neither be *in tuto*, nor *in bona fide*, to obey this charge, but behoved to suspend the same. *4to*, The very decret charged upon in 1657, ordains, that there should be a previous charge directed against the whole heritors of the parish, to meet and convene and stent themselves ; but so it is, there was no previous charge before this stent ; *ergo*, till such time there be a previous charge, the letters ought to be suspended *simpliciter*. *5to*, *In anno* 1653, the chargers did take a great gironel-house from the suspenders, to preach in till the kirk were built, for which they promised to pay yearly L.40 of tack-duty, (which gironel they have ever kept since,) and therefore craves compensation thereof with this stent. At the calling of this suspension, either party declared that they would hold the copy of the suspension for a principal. To the L.360 alleged paid,

ANSWERED,—Ought to be repelled, because not instantly verified. As to the gironel-house, no compensation, *quia non inter easdem personas* ; for it was the heritors that became obliged for the said tack-duty, and not the kirk-session, who charge now. As to that which is said of a previous charge, none is necessary, because the suspender compeared voluntarily by his chamberlain, Ja. Sandilands, and consented to the stent, as appears by the stent-rolls.

All which being considered by the Lords, they found the letters orderly proceeded, notwithstanding the reasons of suspension ; and therefore ordained them to be put to further execution, ay and while the suspender made [payment] of the sum charged for, to Mr. William Walker, now minister there, and the kirk-session thereof.

Suspender, Ja. Stewart. *Alt.* ———

Signet MS. No. 43, folio 15.

1664. *January 7.* CHRISTIAN RAMSAY and JO. HAMILTON, her Husband,
against GEORGE, LORD RAMSAY.

GEORGE, LORD RAMSAY, in December 1661, grants bond to Christian Ramsay, daughter to Mr. Simeon Ramsay of Whitehill, for 3500 merks, with L. 300 of expenses, and L.10 of penalty in case of failyie. This bond she registers in 1662 ; and with consent of Jo. Hamilton, saddler, burgess in Edinburgh, her husband, for his interest, charges him to make payment of the same. This charge he suspends ; because, *1mo*, albeit the said bond bear dated in 1661, yet the debt therein contained is an old debt, due by the suspender to the charger, conform to a bond long before the act of debtor and creditor ; which, at persuasion of Mr. James, now Sir James Ramsay, and Mr. George, advocate, her brother, he renewed to her ; and so the defender having taken the benefit of the said act of debtor and creditor, as is notoriously known to the clerk of the bill, no execution can

pass against the suspender on this bond; and therefore ought to be suspended. *2do*, The very bond charged on, bears an express clause, that it shall not be lawful for the charger to uplift the said money, without the special advice and consent of her said two brothers: she accepted the said bond under that condition. But so it is, they have not consented to the said charge, but, on the contrary, have assisted the suspender in procuring this suspension of the said charge; and that in respect they are afraid that she and her said husband will dilapidate the same; and therefore, &c. This suspension being called, the charger's procurators allege against the said second reason of suspension, as insisted on, that it ought to be repelled, because, *1mo*, The charger is married since the granting of the said bond, and has children and a family to maintain; and so in reason cannot be debarred by her brothers from uplifting the said money; especially seeing this clause is to their behoof, they being her nearest heirs. *Item*, Her husband may trade therewith. But, *2do*, for a peremptory answer thereto, there is produced a consent or declaration under her brothers' hands, whereby they declared that their intention in inserting of the said clause, was not to seclude their sister, now charger, from uplifting the same from the suspender, providing she should secure it in some other manner of way, best tending to her advantage, and not dilapidate the same: *item*, Declared, that if she should take any preposterous course therewith, or sinisterously employ the same, that then this their consent should be null. To which it was replied by the suspender, *1mo*, That he opposed the clause in the bond, whereby it was provided, that no time during her lifetime, (*ergo nihil refert*, as to suspender, whether she be married or unmarried,) she shall uplift the same, without the consent foresaid. *2do*, As to the declaration, it is replied, that the same is no positive consent; but allenarly their intention of inserting the said clause. *3to*, It bears a clause irritant, *videlicet*, that if she take any preposterous course to her prejudice, that then the same shall be null. Where to it was duplied for the charger, that she opposed the foresaid declaration; and as to the clause irritant, it says nothing, unless the suspender were able to subsume, (which he is not,) that she has taken any such dishonourable course. In respect whereof, the letters ought to be found orderly proceeded.

All which the Lords having considered, they find the letters orderly proceeded, and decern the suspender to pay to the charger the said 3500 merks. *Item*, Suspend the letters simpliciter as to the 300 merks of expenses, and L.10 of failie.

Charger, Mr. Thomas Baird. *Alt.* Mr. Thomas Lermonth.

Signet MS. No. 57, folio 18.

1664. *July 12.* ISOBELL NICOLL and JAMES INNES, her Husband, *against* THOMAS BLAIR and SIR THOMAS WALLACE of Craigie, Advocate.

THOMAS BLAIR, merchant in Edinburgh, by his bond obliges him to content and pay to Andrew Nicoll, burgess there, the sum of L.27, 11s. Sterling money, in 1662. Sir Thomas Wallace of Cragie, advocate, by his [bond,] obliges him