

Whereto it was TRIPLIED for the charger,—That the act of Parliament was general, of all decreets; and that by the undeniable practice of Scotland, the said act doth militate against such as are contumaciously absent; otherwise it were to no purpose to obtain sentence, *et contumaces lucrarentur ex suo dolo*. 2do, It were against all reason, that upon raising or intending of a process, (which is in every man's power,) execution of sentences or decreets should be stopped after they are pronounced by the Lords of Session; and especially when the defender has many just defences against the pursuit intended against him; and when the pursuit is only raised at the instance of the suspender's pupil after obtaining of the decret whereupon this charge, by him suspended, is founded; by the which it evidently appears that the same is only raised, *dolo malo et animo protelandi litem*. And all that could be now craved was, that action might be reserved, at the instance of the said pupil, as accorded of the law. 3tio, Neither in this suspension, nor in the said process, are there any [writs] produced to instruct the said suspender's title as assignee, or having right from the said minor; so that, albeit decret were obtained at the said minor's instance, for the said sum of 4000 merks, against the charger, (as is not,) yet it were against all law, equity, and reason, that the curator should compensate debts justly owing by himself, with debts owing to his pupil. *Igitur*, The letters ought to be found orderly proceeded.

The Lords repelled the reason of suspension, with the duply, in respect of the reply and triply made thereto; reserving always to the said Thomas Blair, suspender, action for the said 4000 merks, upon his pretended assignation thereto. In the mean while, find the letters orderly proceeded, ay and while the suspender pay to the charger the said L.27, 11s. Sterling, with the said L.8, also contained in Sir Thomas Wallace, his ticket.

*Suspenders*, Mr. Thomas Winziet, and Sir Thomas Wallace. *Alt.* Mr. George M'Keinzie.

*Signet MS. No. 65, folio 20.*

1664. *July 12.* THEODORE BEATON *against* ANNA MACMORRAN, Lady Newhall, ANNA MAXWELL, Old Lady Newhall, and CAMPBELL of Cesnock.

KING CHARLES the First, by his gift under his hand, at Whitehall, 1627 years, grants to Sir Ja. Scot of Rossie, all and hail the maills and duties of the lands of Kingsbairnes, within the stewartry or sherifffdom of Fyfe, extending yearly to twenty chalder of victual, nine of wheat, and eleven bear; with L.48 of silver, and 100 capons; and that during his lifetime. Sir James, in 1631, assigns the said gift of pension to Doctor David Beaton, and Ester Gillen, his spouse; who obtain a ratification thereof from his Majesty, during Sir James, his lifetime. Doctor Beaton, in 1631, assigns the same to Edward Sedler of London, Esquire, and Mary Sayer, his spouse, and her assignees, during her lifetime. The said Mary dies in 1661; and nominates her daughter, Margaret Lauder, her executrix, as the testament confirmed in England bears. This Margaret Lauder, in 1663, assigns this pension to Theodore Beaton, son lawful to the said Doctor Beaton; at least

constitutes him her factor for uplifting the said annuity, for the years 1657, 1658, 1659, 1660, &c. as the factory dated in 1663, and registrate at St. Androis, bears. Theodore, upon this right constituted in his person, pursues Anna Macmorran, Lady Newhall, and Anna Maxwell, Old Lady Newhall, with \_\_\_\_\_ Campbell of Cesnock, her spouse, for his interest, to make payment to him, as assignee foresaid, of L.9 Sterling, of all the years preceding, as the fourth part of the said annuity, for which they are liable in payment. For instructing the summons, there is produced the king's gift; Rossie's assignation of the same, with the king's confirmation thereto; Doctor Beaton's assignation thereto to Sadler and his spouse; the confirmed testament of his spouse, wherein she nominates her daughter, Margaret Lauder, her executrix; then the said Margaret her assignation, or letter of factory to this pursuer. ALLEGED for the defenders, that no process can be sustained against them, till the debt be confirmed in Scotland; and that the defender ought to find caution. To which it was ANSWERED, that the allegiance ought to be repelled, because of the administration in England. *2do*, The pursuer cannot find caution, because he found caution already, in loosing the arrestment.

The Lords ordain the defenders to make payment to the pursuer, conform to his rights, titles, and securities aforesaid, of the said L.9 Sterling, for all the years respectively above written.

*Act.* Mr. William Beaton, Mr. Alexander Spotswood. *Alt.* Mr. Jo. Cunyghame.

*Signet MS. No. 66, fol. 21.*

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1664. *January 12.* SIR GILBERT MEINZIES of Pitfoddells *against* The CREDITORS of JOHN DONALDSONE.

JOHN DONALDSONE, merchant-burgess in Aberdein, loans to Sir Gilbert Meinzie of Pitfoddells, and William Meinzie, fiar thereof, his son, *in anno* 1649, the sum of L.16,000. They for his repayment and better security of the same, sell, dispone, wadset, and annailyie to him, his heirs, and assignees, all the town and lands of Gilcomstone, with the lands and mill of Ardo, and the salmon-fishing thereof in the water of Dee; lying within the parishes of St. Machar and of Bouchrie Devewinck, and the sheriffdoms of Aberdein and Kincardin: *item*, they set him in tack the teind sheaves of the lands above written: and all this during the not redemption thereof; which are declared redeemable by the said Sir Gilbert and his foresaids, by payment or consignation of the foresaid sum of L.16000, on requisition specified in the contract of wadset. Conform to this contract, he is immediately, in 1649, infest in all and whole the said lands. Then by virtue of a contract betwixt him and Andrew Raite in Mariecouller, as principal, and the said Sir Gilbert, as cautioner, the said John sets and assedates to the said Andrew Raite, his heirs, assignees, and subtenants, all and hail the lands above mentioned, wadset to him for five years to come; the entry of it to be at Whitsunday 1649; and that for the yearly payment to him of L.1040