

upon his assignation raises letters of horning, and charges Inchmarto to pay the said 400 merks to him. Inchmarto suspends upon double poinding, and concludes that he may not be liable in double or twice payment; seeing he is willing to pay to any of the two persons that shall be found to have best right thereto. The double distress he instructs by James Petrie's back-bond to him; by his bond he has granted to Glenbervie; and by the summons raised at Glenbervie's instance, for payment making of the same sum as yet depending; which all would be good reasons of suspension against the cedent; and, therefore, also against his assignee; especially here, where the assignation is to the cedent's behoof, as he offers to prove by his oath of verity: craves, therefore, the letters be suspended, while the action intented at Glenbervie's instance be determined. This suspension being called, there was produced for the charger the registred bond and the assignation. To the reason of suspension it was answered by the charger's procurators, that the same ought not to be respected, because by the back-bond, the charger's cedent is only obliged to refund the sums, in case Glenbervie should recover decret before the late Commissioners; which he has never done; *igitur*. *2do*, The charger, in case Glenbervie was ready to insist for his foresaid summons, was willing to dispute with him. *3tio*, Offers to the suspender (he paying the sum charged for) to grant him a discharge, with absolute warrandice at all hands.

All which being considered by the Lords, they find the letters orderly proceeded, and ordain them to be put to farther execution; ay and while the suspender pay to the charger the said 400 merks, with the L.100 of expenses. Always reserving to Glenbervie his action upon the tack for the said sum, against the said James Petrie, the charger's cedent, as accords of the law.

Suspender, Patrick Fraser. *Alt.* Mr. Andrew Birnie.

Signet MS. No. 71, folio 27.

1664. *January* 16. ANDREW ARRAT *against* JO. LINDSAY of Edzell, and JO. LINDSAY of Pitstandlie.

In anno 1651, George Lord Spinie, as principal, Jo. Lindsay of Edzell, and Jo. Lindsay of Pitstandlie, as cautioners, by their bond oblige them to pay to Isobel Arrat, lawful daughter to William Arrat of Dunbaro, the sum of 3000 merks. Isobel in 1654 registers it; and in 1658 she assigns the same, with consent of Jo. Ramsay of Augharagh, to Alexander Arrat, her brother-german. He, by his disposition in 1661, transfers the same to Andrew Arrat, his brother; who charges Lindsays, the cautioners, with letters of horning thereupon. Thir they suspend, *1mo*, Because the same charger having formerly charged them on the same bond, they had suspended him then; which suspension, (though often called and disputed *in foro contradictorio*,) stands yet undiscussed; it was therefore mere malice in the charger to raise new letters of charge against them, only to put the suspenders to trouble and unnecessary charges. *2do*, Though the cause of the bond granted to Isobel Arrat, whereon the charge is founded, is said to be borrowed money, yet it is notour that the said Isobel never delivered any more to the said Lord Spinie, nor the half of the said sum of 3000 merks; only the bond was granted for the whole, because she faithfully promised to pay the rest within

a very short space ; which, though she never did, and this the suspenders will refer to her own oath of verity. *3tio*, The charge, besides that its unjust, is also most informal ; for my Lord Spinie (who nevertheless is principal debtor) is not only not distressed for this debt, but not so much as called ; who, though he has receipts or discharges of a part of the said principal sum, with the most considerable part of the annual-rents that he has paid ; and therefore a time at least ought to be granted the suspenders, to produce him, to the effect he may exhibit these receipts. At the calling of this suspension, to thir reasons there was eiked this other, that the letters must be suspended, because the same 3000 merks, wherefore they were caution, was arrested in their hands at the instance of Francis Guthrie of that ilk, as belonging to him by virtue of a contract in 1660 betwixt him and Alexander Arrat, the charger's cedent ; whereby Alexander obliged him to assign, or *per verba de presenti* did assign to him the said bond of my Lord Spinie, with the sum therein contained ; *item*, obliged him for causes therein contained, to deliver the said bond to Guthrie : and, therefore, till this arrestment be purged, or till it be found who has best right to the said sum, the letters must be suspended. For proving this reason, there is produced the executions of an arrestment proceeding on the Sheriff of Forfar his precept in 1663, whereby the sum now charged for is arrested, aye and while the said contract be fulfilled to him. To this eiked reason of suspension it was replied, that they would purge the arrestment, and for purging thereof produced a discharge under the Laird of Guthrie's hand, whereby he grants him to have full satisfaction of all that was addebted to him by Andrew Arrat ; and particularly of that contract that was betwixt them in 1660.

Then it was alleged by the suspenders, that they offered them to prove by Isobel Arrat (to whom the bond was granted) her oath of verity. *1mo*, That she never really delivered to my Lord Spinie more nor the just half of the sum contained in the bond ; and that at the granting thereof. *2do*, That before the assignations made by her, she received payment of the whole bygone annual rents of the said principal sum. Whereunto it was answered by the charger, that he would not suffer his cedent's author, Isobel Arrat, to depone to his prejudice who is assignee. To which it was replied by the suspenders, that they offered them to prove by his oath, that the translation made to him of the said sum was to his sister Isobel's behoof ; *item*, by Alexander Arrat's, his cedent's oath, that this pursuit is to Isobel's behoof ; and so she will [be] obliged to depone.

Which allegiance for the suspenders, with the reply, the Lords found relevant, to be proven first by Andrew and Alexander Arrat their oaths ; a certain day is therefore assigned to their procurators to produce them, to the effect to give their oaths. In obedience whereof, Alexander Arrat, being solemnly sworn, deponed, that the assignation made to him was to his own proper use and behoof, and not to his sister Isobel's ; which deposition the Lords having considered, they refused to take the said Isobel, her oath, to the assignee's prejudice ; because the deposition proved not the reason of the suspension referred thereto ; and therefore found the letters orderly proceeded ; and ordained them to be put to execution, aye and while the suspenders paid the sum charged for.

After pronouncing which interlocutor, the suspenders gave in a supplication to the Lords, bearing that the said bond was really granted, *spe tantum numerandæ pecuniæ* ; the rest having been promised at such a day ; betwixt and which day the Lord Spinie going in with his Majesty to Worcester, the same was never delivered ; and this they

offered to prove thus :—by the charger's oath they would prove that the translation was to Isobel's behoof; by his cedent's oath, that this pursuit is to her behoof; and to her own oath the truth *exceptionis non numeratæ pecuniæ*: but now the said Isobel (in whose oath the foresaid reason would ultimately have terminated for proving thereof) is dead, so that the supplicant is prevented in the probation of his foresaid reason by her said oath; therefore beseeches the Lords they would ordain the charger, and his cedent, to depone anent that reason; to whose oath he now referred the same *simpliciter*; to wit, whether or no, to their certain knowledge, the one half of the said principal sum was only delivered at the subscribing of the bond charged upon. *Item*, Craved the letters might be suspended to eight years' annual rent, conform to the Act of Parliament made in favours of forefaulted persons, (such as the Lord Spinie was,) and their cautioners.

Upon reading of this supplication, the Lords caused call the charger's procurators to hear what they had to say against it, who alleged that the foresaid desire could not be granted, seeing an act of litiscontestation was already extracted, and the cedent had deponed already; yet of consent were content to admit the reason above written as relevant, *cum onere maximarum impensarum*, providing there be no farther suspension plead in this matter. Whereupon they being examined upon oath, deponed *negativè*, that for any thing they know their sister did pay the whole sum now charged for, to my Lord Spinie. In respect of which deposition, not proving the reason that was referred thereto, the Lords found the letters orderly proceeded, aye and while they were obeyed; suspended them for eight years' annual rent; and found the arrestment sufficiently purged.

Suspender, Mr. George M'Kenzie. *Alt.* Mr. Robert Sinclair, Sir George Lockhart.

Signet MS. No. 76, folio 29.

1664. *January 16.* GEORGE JOHNSTON *against* JAMES TWEDIE and
WALTER TWEDIE.

IN anno 1656, James Twedie in Hairston, as principal, and Walter Twedie, his cautioner, by their bond of corroboration, obliges them to pay to Geo. Johnston in Carryserane, the sum of 800 merks. This bond he registrates, and thereon charges them with horning; which charge they suspend, because the charger, by his ticket or discharge in 1657, granted him to have received payment of 300 merks, in part of the foresaid principal sum of 800 merks; and that by accepting a bond of 300 merks, wherein Jo. Grege obliged him to pay to Ja. Twedie, or his, the sum of 300 merks, which the said Ja. assigned him to. Then again, the same charger, by his other ticket in 1659, grants him to have received from the suspender the sum of L.187, also in part of payment of the foresaid principal sum contained in the said bond of corroboration; and therefore discharged him thereof, *pro tanto*. And for the remainder of the aforesaid principal sum, they had truly paid the same, conform to precepts drawn upon them by the charger; which they referred to his oath of verity. *Igitur*, this charge being for the said whole sum of 800 merks, ought to be suspended.

At the calling of this suspension, there is produced for the suspenders the said two discharges, together with another, whereby the charger grants him to have