

said Jo. Simpstone, pursuer, *in integrum*, in sick like manner against the same as if it had never been made. Upon the pronouncing of which decret, William Tours gave in a supplication to the Lords, craving his advocates might have a sight of the said process before extracting of the decret; to the effect they might be heard upon their lawful defences thereagainst. The Lords, by their deliverance, ordain them to see the process in their clerk's hands; in the mean while stop the extracting of the decret, whereupon they are heard of new again. Notwithstanding of all their allegeances, the Lords adhered to their foresaid rescissory decret; only reserved to the said William Tours any right he had to the said lands of Innerleith, before the said inhibition was served.

Act. Mr. William Maxwell, Mr. Thomas Lermonth, Mr. Alexander Oswald.
Alt. Ja. Chalmers.

Signet MS. No. 88, folio 32.

1664. *January 20.* THOMAS HAMILTON *against* GEORGE TURNBULL.

GENERAL Major John Hamilton, son to Sir Alexander Hamilton of Ballincreiff, in 1648 obtains decret before the Lords of Session, against George Turnbull in Mirrietoune, for L.36 Sterling, in Scots money making L.432. Colonel John dies. His brother, Thomas Hamilton, confirms himself his executor dative and so pursues the said George; and in 1662 obtains a second decret for the said sum; whereon he charges him with horning: which letters he suspends, because the said first decret, (which was the ground of the second,) was for null defence, and not compearance, he never being summoned thereto, neither at his own house, nor at the market cross of Edinburgh, pier, and shore of Leith, as being then in England at the engagement; whereas, if he had been summoned he would have alleged, as he does now, that he is content to give his oath that he was never addebted in any sums of money to the said General Major; which would have been sufficient to have stopt the pronouncing of the said decret. *2do*, Albeit, Mr. David Thoires compeared for him in the said action, yet he had no warrant so to do, neither could he propone any defences for him (not having had any information;) only he craved a commission for taking the suspender's oath anent the truth of the debt charged for; which though granted, but instead of leading the commission, they extracted the decret charged upon against the suspender, without his procurator's knowledge; the verity whereof he refers to the pursuer's oath. *3tio*, The suspender has raised reduction of the said decreets; *Ergo*, At the calling of this suspension, there is produced a testificate under Sir Ja. Middleton's hand, bearing the suspender in 1648, the time of the pronouncing the said first decret, to have been under his command. As to the foresaid reasons of suspension, coincident with the reasons in the reduction, it was answered for the charger; that they opponed the last decret in 1662 charged on, bearing the said reasons to have been all then proponed by way of defences, and to have been repelled; because Colonel Hamilton having obtained decret for the same in 1648, the suspender should have craved to [have] been reponed during his lifetime, (who likely might have proven the debt otherwise than by the suspender's oath,) and not now when he is dead; which may seem to

have been done of purpose : but this charger as executor, (it being so long since,) cannot prove it. *2do*, The suspender purges not his contumacy, by alleging he was then in the army, because this decret was obtained in January 1648; whereas the engagement was not till the July thereafter. *3tio*, As to the testificate, it wants writer's name, and witnesses; *item*, contains a false narrative; *igitur*, ought not to be respected.

In respect of which answers, the Lords found the letters orderly proceeded, ay and while the suspender pay the sum charged for. *Item*, assoilye the pursuer from the said summons of reduction intented against him.

Act. Suspende, Mr. Nathaniel Fyfe. *Alt.* Mr. Robert Sinclair.

Signet MS. No. 89, folio 33.

1664. *January 19.* JOHN MACMILLANE *against* JOHN BROWN of Mollance.

Apud Edinburgh, 19th January, 1664, *licet hic scribatur.*

BY a contract of wadset, in 1648, William Macmillane in Bar, lends to John Brown of Mollance 1000 merks; wherefore Mollance wadsets and dispones to him the lands of Garranton, lying within the parish and barony of Crocemichell, and stewartry of Kirkcubright, for the yearly payment to him of 80 merks; always redeemable to him upon payment of the said 1000 merks. John Macmillane, son to the said William, registers this contract; and, upon his decret of registration, charges John Brown of Mollance, son to the said John, granter of the wadset. This charge he suspends, on thir reasons, *1mo*, Because the charger in 1658, assigned his brother William to 400 merks of the said 1000 merks; contained in the contract; which assignation was duly intimated to him; and conform thereto, he had paid the said 400 merks, as the [said] William his discharge thereof produced did prove. As [to] the remaining 600 merks, the suspender, by an authentic instrument, taken in a notary's hand thereupon, offers him to prove, that conform to an agreement and condescendence betwixt him and the charger, he made real offer to the charger of 400 merks thereof. As to the other 200 merks, the same is arrested at the instance of two several persons in his hands, as the copies of the said arrestments delivered to him prove; so that, till they were loosed, he could not obey this charge. At the calling of this suspension, there were farther thir eiked reasons added, *1mo*, The letters ought to be suspended, because, in the contract of wadset, there is a clause of requisition on forty days; but so it is, no requisition was used, at least no instrument produced for proving the same. *2do*, There was at the time of the said contract of wadset, a back bond granted by John Macmillane, the charger's father, whereby he superseded, the exacting of the said 1000 merks from the suspender's authors, during all the days of Rosina Mac-kantney, the charger's mother's lifetime, and for thirteen terms thereafter; but so it is, the said Rosina died but in 1659, and there are not thirteen terms elapsed since. *Igitur*, the letters must be suspended. *3tio*, The annual-rent must be restricted to six of the 100, which is at eight in the contract. To thir it is answered by the charger's procurators, *1mo*, That he acknowledges his assignation of 400 merks of it to his brother; and therefore restricts his charge to the remaining 600 merks. *2do*, To the clause of requisition contained in the contract,