

he fulfilled the same; for proving whereof, an instrument of requisition, taken in 1658, is produced. And for the annual-rent, craves but six for the 100. *4to*, As for the second eiked reason, (which the suspender's procurators declared they insisted on,) and for the eliding thereof, there is produced a bond of corroboration granted by the suspender, whereby, in 1663, he obliges him to pay to the charger the said sum of 600 merks, (and that notwithstanding of any suspensive clause contained in the said back bond,) betwixt and July next.

In respect of which answers, the Lords, (notwithstanding of the reasons of suspension, both libelled and eiked,) found the letters orderly proceeded; and ordained the same to be put to further execution, ay and while the suspender pay to the charger the sum of 600 merks, whereto the charger restricts his charge, with the ordinary annualrent at six for the hundred.

*Suspender*, James Brown. *Alt.* Mr. William Maxwell.

*Signet MS. No. 90, folio 33.*

1664. *January 21.* STEVEN TOUCH *against* The TENANTS of Falkland.

IN 1642, William Touch, merchant in Leven, and Christian Cunnygham, his spouse, and the longest of them two in conjunct fee, were infeft in an annual rent of L.80, to be uplifted yearly, furth of the lands of Falkland, that appertained to Jo. Avarie, burgess thereof. Upon the which infeftment William Touch in 1647 obtains decret before the Lords, for poinding the readiest goods and gear that should be found on the ground of the lands, out whereof the annual-rent is payable; and failyeing thereof, to apprise the ground right of the lands, &c. After this, William dies; and his son George Touch serves and retours himself heir to his father; and, accordingly, in 1654 obtains himself infeft in the annualrent above rehearsed, to be uplifted out of the lands above written. Then George disposes the same to Stevin Touch, skipper in Leven. Conform to this disposition, containing assignation, the said Stevin was infeft in 1659; and thus, as having right, both by disposition and assignation, from one that was both served heir and confirmed executor, he raises a summons for poinding the ground, against the tenants and present possessors thereof. For instructing the summons there is produced William Touch's seasine, with the decret obtained at his instance in 1647; then George his retour to his father, with his seasine following thereupon; then George's disposition thereof to this pursuer, with his seasine taken thereupon.

It is ALLEGED, by the defender's procurator, That there can be no decret of poinding of the ground at the pursuer's instance, because no seasine produced for him of the tenements of lands craved to be poinded. *2do*, Though a seasine be produced, yet the same is base, and not clad with possession, and so cannot be respected. *3tio*, The ground cannot be decerned to be poinded, because in the tenements libelled they are tenants to one Martha Blyth, liferentrix of them.

To the first of thir it was REPLIED,—That they opponed the seasine produced. To the second, opponed the decret of poinding in 1647. *Item*, That they were tenements within burgh. To the third, the same must be repelled, because the said

Martha Blyth is dead two years since; but if she be living, declares that this decret shall not prejudice her right during her lifetime.

All which the Lords having considered, they ordained the ground to be pointed or appraised; but always with reservation of the said Martha's liferent, if alive.

*Act.* James Abernethie. *Alt.* Mr. David Balfour, Mr. Thomas Murray.

*Signet MS. No. 91, folio 34.*

1664. *January 21.* JO. EARL of Haddinton *against* The RELICT and CREDITORS of WILLIAM GRAY of Pittendrum.

WILLIAM GRAY of Pittendrum, merchant in Aberdein, and provost thereof, dies without any body that can succeed to him in his lands or heritages; because he has none of his own body lawfully procreated; and for his father, he was a bastard, and not capable of succession. By reason thereof, his whole patrimony and estate falls in the King's hands, as last heir, heritably, and by privilege of the crown. This, his Majesty, with the advice of Jo. Earl of Crawford and Lindsay, Lords Parbroth and Struthers, his Highness Treasurer, Collector of his Majesty's augmentations of his kingdom of Scotland, and Controller of William Lord Bellenden of Brughton, his Depute in the said offices, and the rest of the Lords of Exchequer, grant, gifts, and dispones, to Jo. Earl of Haddinton; who immediately raises summons against Christian Cullen, the relict of the said William Gray, and his creditors to hear his gift declared. *Item,* To see it found that he as donatar has undoubted right to all the goods and gear whatsoever that pertained to the said William the time of his decease, and particularly to thir following; divers tenements, (all bounded,) in Aberdein; three half nets of salmon-fishing in the fords of the water of Dee; *item,* Another net, half net, and the fourth part of a net of fishing in the water of Don; and the Raick of Die, &c. *Item,* That he shall hold them in that same very fashion of the king, as they held formerly, in all their meiths, marches, and bounds, paying the same *blench* or feu farm duties they did formerly. There is produced for instructing the summons, the gift of *ultimus hæres* under the great seal.

It's ALLEGED for the relict and creditors; that no process ought to be sustained at this pursuer's instance in this cause, and that no declarator can pass upon the foresaid gift in his favour; because they offered them to prove, that the said deceased William Gray, his goodsire and goodame, were lawfully married together; and that the said William's father was gotten in lawful marriage, and, therefore, the king cannot be *ultimus hæres* upon the account the said William's father was a bastard; and so the said gift must fall and be of no avail; *Igitur* no declarator.

Which allegiance the Lords finding relevant, they assigned a term to the defender's procurators for proving the same; wherein they succumbed, so that the term was circumduced against them, and decret given forth, declaring that the said William deceased without any person to succeed him; and consequently that his lands, goods, and gear fell to the king; and that now the same pertain to the pursuer as the king's donatar; and that therefore he ought to be answered thereof; reserving always to the relict and creditors all their lawful defences upon