

No. 10. pointing and suspension, which, albeit it extended only *specificè* to the crop 1633, for the which no pointing was executed, yet the Lords found, that, during the dependence, and before the discussing thereof, the party could not misknow by pointing for any year whatsoever contained in the decret, seeing both the parties were summoned in the double-pointing to bring with them their rights and decreets, as also this decret for the annual-rent, and to see and hear the same suspended; and so the decret being called for to be suspended, he could execute the same for no year: Neither was it respected, that the defender alleged, that the same was suspended for the year 1633, and none other preceding; for it was elusory to think that the tenants would crave to have their goods and gear safe from pointing that year, and not to think that they desired to have the like for all years preceding, which the Lords found to be the just effect of the suspension; but the Lords reserved consideration and modification of the contravention to themselves at the advising of the cause, after probation was concluded.

Act. Craig.

Alt. Trotter.

Clerk, Gibson.

Fol. Dic. v. 2. p. 414. Durie, p. 733.

1642. January 25. STIRLING against AIKENHEAD.

No. 11.

Major Stirling having arrested, in Mr. James Aikenhead's hands, certain silver plate pertaining to Colonel Cunninghame, for satisfying of 300 merks, addebted by the said Colonel to Andrew Stirling of Law, brother to the Major, and which he was obliged to pay to his said brother, in name of the said Major; whereupon the said Mr. James being pursued to make the arrested goods forth-coming; it was alleged by Mr. James, that the principal bond was suspended by the Colonel, so that, till that suspension were discussed, no process could be granted upon this pursuit, seeing this pursuit is but a part of the execution of that bond, which is suspended. The Lords repelled this exception, seeing the principal party was called in this process, who might propone, by way of exception, any reasons contained in that suspension, which might elide the principal debt.

Fol. Dic. v. 2. p. 414. Durie, p. 888.

1672. January 25. MR. ALEXANDER BIRNIE against ———.

No. 12.

A suspension of a decree, *in foro* being passed, without reporting it to the Lords, was found null.

Mr. Alexander Birnie having obtained decret against ———, *in foro*, he obtained suspension by one of the Lords; which when it came to be discussed, the charger alleged, that the suspension was null, being passed contrary to the Act of Regulation, which appoints decreets *in foro* not to be suspended, but *in præsentia*, or by three Lords in the Vacation. It was answered, That this suspension being passed, it behoved to stand till it were discussed; *2do*, That the Lords, upon

supplication, remitted the bill to one of their number, to hear the parties, and to do as he found just, or to report, which gave him the same power as of the whole Lords; and though the bill cannot now be found, yet he who both passed the bill, and the Clerk, will depon thereupon. It was replied, That this warrant could not authorise one Lord in the vacation time to pass the bill, when the charger was neither obliged to attend, nor could get the Lords' answer upon amand.

The Lords, without considering the reasons of suspension, found the letters orderly proceeded, as being unwarrantably passed.

Stair, v. 2. p. 56.

No. 12.

1674. January 14. M^cINTOSH against M^cKENZIE.

Collin M^cKenzie of Kinraig having apprised the lands of Multovie and others, and having thereupon charged the superior, pursues a removing against Lauchlane M^cIntosh of Kinrara, who had apprised the same lands, and was infest. The said Lauchlane raised suspension and reduction; and the charger having called upon the copy of suspension, the suspension being produced, the charge was given out to see to the suspender, and was returned, inrolled, and now called by the Ordinary. The charger did not insist, or produce the decreet of removing, which was the charge. But the suspender produced the suspension, and a copy of the decreet, and alleged, his reason being relevant, and instructed by the charge, he referred the same to the Lords to be advised, that the letters might be suspended *simpliciter*. The reason of suspension was, that the charger was not infest, but did only charge the superior, which could be no warrant for removing.

The Lords found, That the reason could not be instructed by the copy, and therefore suspended the letters till the charge were produced. But seeing the suspender had come from the farthest part of the north, to keep the diet of compearance, conform to the books of inrolment, they modified to him £.200 of expenses, if the charge were not produced; but if the advocate compearing for the charger should depon that, since the first calling by the Ordinary, he was not master of the process, restricted the expenses to £.100.

Stair, v. 2. p. 252.

No. 13.

A copy is not sufficient to produce as the charge.

1681. December 1.

ALEXANDER GORDON, Procurator-Fiscal of Kincardine, against DAVID JAMY.

The Sheriff of Kincardine having declared a man fugitive, for theft, upon an irrelevant dittay, and this being suspended by the Lords, through some mistake, they found the letters orderly proceeded, seeing the party ought to have suspended before the Justices, who are the proper judges.

Harcarse, No. 943. p. 265.

No. 14.