

1684. November 6.

JEAN DOBIE and LAUCHLAN M'INTOSH against GEORGE GALBRAITH.

JEAN DOBIE in Dalkeith, and Lauchlan M'Intosh her husband, gave in a petition against George Galbraith, merchant in Edinburgh, craving, (though they were suspenders) that their suspension might be summarily discussed upon the bill, seeing the clerk of the bills refused the caution they offered, and they were not able to find better.—THE LORDS having considered this bill, remitted to my Lord Redford, who passed the bill of suspension, to discuss the reasons on the bill, if the charger insist, or otherwise to take the petitioner's oath that he cannot find a better cautioner than the person offered; providing always the petitioner consign a disposition of his hail estate in security; and then allow Redford to expedite the bill of suspension.

*Fol. Dic. v. I. p. 121. Fountainhall, v. I. p. 306.*

1696. December 4.

LEVISTON against BUCHANAN.

RANKEILOR reported a bill of suspension by Leviston of Kirkland against Buchanan of Arnprior, wherein the Lords had allowed him to consign a disposition, on his giving oath that he could not find better caution than he offered; Arnprior craved up the disposition, to the effect he might take infeftment thereon, because the suspender was *vergens ad inopiam*, and other creditors, during the dependence, might do diligence, and be preferred to him.—THE LORDS considered the ancient uniform custom was, that these dispositions were only consigned evidents, not to be made use of till the cause was discussed in favours of the charger; and if this were granted, it would put the lieges to great expenses in taking sasine, and would make these dispositions delivered evidents under an irritant and resolute clause and condition, that if the suspender prevailed, then the disposition and sasine should be void and null in themselves; and the inconveniences on the other side are easily solved; for the disponent cannot prejudge him by any voluntary subsequent deed; and as to prior creditors going on to adjudge, the suspension would not hinder this charger to do the same, not on the consigned disposition, but on his registrate bond or decreet, which is the ground of his debt; and therefore adhered to the former custom, and would not allow the disposition to be given up, to be made use of till the event.

*Fol. Dic. v. I. p. 122. Fountainhall, v. I. p. 739.*

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No 5:

A suspender himself having petitioned to discuss upon the bill, the caution offered not satisfying the clerk, the Court permitted that either the reasons be discussed on the bill, if the charger insisted; or otherwise, that the bill be past on juratory caution, with a disposition *omnium bonorum*.

No 6:

A disposition *omnium bonorum* being granted, as usual, along with juratory caution, the Court refused to allow it to be delivered to the charger, that he might be infeft on it, during the dependence of the action.