

they were ever willing to have counted with the said Mr. David for them, but he declined; this they refer to his oath likewise. But, *3tio*, if he would come to count and reckoning with them, they offer to make appear, that he is more nor paid of the said two years duty; partly by money paid to the collectors and sub-collectors of the sheriffdom of Berwick for the time, for cess and other public burdens, which Mr. David was obliged to relieve the suspenders of, by the tack, at the least, to allow the same the forend of the said duty; and partly in repairing of the houses of the said lands, which he was likewise obliged to relieve him of; all which summed together makes L.818, whereof the suspenders have discharges and receipts to show. *4to*, Mr. David having charged them, they suspended. During the time the said suspension stood yet undiscussed, he assigns it to this man who now charges; *igitur*, no charge can be sustained at his instance till the first suspension be discussed. *5to*, For the cayne fowls, and other remaining heads of the tack, offers to prove them fulfilled by the charger's oath.

To the second reason above written, it was ANSWERED for the charger, that he insisted only for 1650 and 1651; and offered to prove, by the suspenders' oath, that he sustained no loss nor vastation for the said two years. The suspenders referred the same back again to his oath. Then, in fortification of the third reason, there are produced discharges for L.818, which is alleged will more nor pay the charger all he can acclaim for the duty of the said two years; at least, what they do not instruct by writ, they are content to refer the payment thereof to Mr. David his oath. He being examined upon this and the second article, he deponed *negativè*.

Whereupon the Lords suspended the letters *simpliciter* for the sums contained in the discharges; found them orderly proceeded as to the remaining sums charged for, amounting to L.191, *salvo justo calculo*, with 80 merks of expenses contained in the tack charged on.

*Suspender*, Mr. Alexander Spottiswood. *Alt.* Mr. Jo. Harper.

*Signet MS. No. 83, folio 63.*

1665. *February* 18. Sir GILBERT STUART of Polkaik *against* THOMAS ROBERTSON, alias MACCONDOCHIE.

THOMAS ROBERTSON, alias Maccondochie, in Dunkeld, is addebted to Thomas Young there in 250 merks. This bond Thomas assigns Sir Gilbert Stuart of Polkaik to; who charges thereon. Robertson suspends, *1mo*, Because he never had any dealing with Thomas Young, the cedent, though the bond bear borrowed money; offers to prove the bond to be false and feigned, as he has really intented summons of exhibition of the bond to that effect. *2do*, *Esto*, It were a true debt, he craves compensation of greater sums addebted by the cedent to him. At the calling of this suspension, there is proponed this eiked reason, that Polkaik's assignation was to his cedent's use and behoof; which being proven, they offered them to prove by the cedent's oath, that the bond charged on was consigned blank in William Rosse his hands, to have been filled up in the sum at the sight and de-

termination of two friends; without which the cedent filled up most fraudulently the sum charged for.

The first part of this eiked reason, *videlicet*, That the assignation was to the cedent's behoof, the Lords found it relevant to be proven by the assignee his oath: whereupon a commission is taken to the bailies of Perth for taking his oath; who deponing that it was to his own behoof, the Lords found the letters orderly proceeded as to the sum charged for.

*Charger*, Yeoman.

*Alt.* Nathaniel Fyfe.

*Signet MS. No. 84, folio 64.*

1665. *February 18.* Jo. BROUN *against* MARGARET TAITT, Relict of Thomas Burn, and MARGARET TAITT, her Mother.

MARGARET TAITT, relict of Thomas Burn Candlemaker in Edinburgh, and Margaret Taitt, widow, her mother, as cautioner, in 1662 grant bond to Pat. Broun fletcher, for 1700 merks. Pat. assigns his brother, Jo. Broun merchant, to this bond; and he dying within four days after the assignation, Jo. charges with horning, denounces, registrates, raises letters of caption, takes them and imprisons them. They suspend, *1mo*, Because prove 700 merks of it paid by discharges produced. *2do*, Consign 300 merks in the clerk of the bills his hands to be given up to them. Deny the remanent of the debt. *3tio*, The assignation was not intimate till after Pat. his decease; and, therefore, Jo. unwarrantably charged with horning, and then raised caption; since the most he could have done in that case, was to raise a summons against the suspenders to hear and see themselves decerned to pay, &c. wherein they would have had liberty to propone all their lawful defences.

The Lords suspend for the sum instructed paid by the discharges; *item*, For the sum consigned. Find them orderly proceeded for the rest.

*Suspender*, Abernethy.

*Alt.* James Broun.

*Signet MS. No. 88, folio 64.*

1665. *February 18.* ALEXANDER FRASER of Philorth *against* The MAGISTRATES of ABERDEIN.

ALEXANDER FRASER of Philorth, as donatar to the liferent escheat of Sir Alexander Fraser of Fraserburgh, his godsire, charges the Provost, Bailies, and Council of Aberdein, to deliver to him two great fleiting tuns and four small ones, with their iron chains, iron girts, wedges, mells, gavelocks, and other ornaments and pertinents which were lent to them by the said Sir Alexander, and which they were ordained to redeliver by a decret of the Lords in 1643. This charge they suspend *1mo*, That they are not the Magistrates that were in office the time that decret was pronounced against the town, and so are strangers thereto. *2do*, The charge ties them to an impossibility, to wit, to redeliver them in six days. Now they,