

(as she libels there were,) because the said defunct died twenty days before Whitsunday, and so the lady might easily have dismissed her servants; *3tio*, Offers to prove that the house was furnished, the time of his death, with all necessaries of malt, meal, and others. To which, replied, *1mo*, That the lady being so near her time of delivery, she could not dismiss her servants conveniently, till after the same. *2do*, Whatever provision was in the said house, the time of the defunct's death, it fell all under executry, so that she might not meddle therewith. And as to the third of moveables craved by her, (concerning which the Lords decerned nothing yet,) it's alleged by the pursuer's procurators that, by her contract of marriage, she has accepted a provision in lieu of all thirds or terces she might acclaim; and so was excluded from a third of the moveables; and craved to be heard thereon *in presentia*. Who having been heard thereupon, the Lords found that the pursuer was not excluded from a third of the moveables, by the said contract of marriage; and, therefore, ordain the said parties to count and reckon, one with another, concerning the said third of the moveables acclaimed by her: and for that effect, nominate my Lord Halkerton, one of their number, to be auditor of the said counts, giving him full power and commission to choose a clerk, for whom he will be answerable therein; *Item*, to hear all said and proponed *hinc inde*; to examine witnesses, to see what sums of money pertained to the defunct, the time of his death, that she may have a third thereof; to direct forth precepts for summoning of them; to settle and agree the said parties if he can; if not, to report his diligence in February coming: and to this effect, they are ordained to attend at what diets he shall appoint them; of all which they are to be warned *apud acta*.

Act. Mr. Robert Sinclair, Sir Thomas Wallace, Mr. Jo. Cunyghame. *Alt.* Sir George Lockart, Mr. Geo. Norvell, Mr. Geo. Mackenzie.

Signet MS. No. 42, folio 14.

1663. *December 17.* The MINISTER and KIRK-SESSION of North-Berwick against SIR WILLIAM DICK'S Creditors.

MR. ARCHIBALD TURNER, minister at North-Berwick, obtains decret *in anno 1657*, against the heritors, feuars, life-renters, and other parishioners of the lands of North-Berwick; by which decret, a church is ordained to be built at the said town of North-Berwick; and the place where it and the kirk-yard thereof should be, are also designed: to which effect they ordain the said lands and ground destined for that use, to be valued, rated, estimated, and approven by some indifferent persons appointed by the said commissioners for that effect, granting them commission for that effect; then ordain the heritors and proprietors of the said ground, designed for the said end, to denude themselves in the most effectual way that can be of the law, in favour of the rest of the heritors and parish of North-Berwick, and their successors: *item*, decern them, on their denuding themselves, to accept such prices as the commissioners appointed shall value their land at, to be paid them by the present heritors of the said parish, or those to come. *Item*, ordain the heritors foresaid, to convene themselves at such certain

times and places, under the pain of horning, to choose stent-masters for the stenting of the parish, for the ends and uses foresaid. *Item*, For ingathering thereof, ordain that what stent-rolls shall be made by the heritors convening, that they be as sufficient as if the same had been by the whole heritors present, and consenting: *item*, Ordain them to make quiet payment of their proportions contained in the said stent-rolls. Upon this decret, letters of horning are raised in *anno* 1661: and an act of the kirk session of North-Berwick in 1662, bearing, that some of the heritors, upon intimation made to them, compeared, for considering how the work might be perfected; and some absented themselves: that those that were present found by advice with craftsmen, that the said new kirk would need 4000 slates more, which would be 200 merks; for nails to the slating, forty merks; for thirty-six cartful of lime, at thirty shillings the cartful, eighty-one merks; for 400 feet of glass, at five shillings the foot, 120 merks; for nine windows, 120 merks; for six stones of iron, for glass bands, twenty-four merks; for twelve deals to be doors, for bell nails to them, for bands and locks to them, sixty merks; for a pulpit of wainscot, 100 merks, &c. all which, cast together, makes 1162 merks: and appoints Robert Acheson of Sydserf, and Patrick Hepburne of Craig, to cast the proportions on the heritors, according to the rule of assessments, that it might be furthwith collected: *item*, Appoints others to agree the cheapest they can with craftsmen, about the forementioned particulars. According to this act of kirk-session, the said heritors appointed, did give in a stent-roll made by them, whereby the lands sometime belonging to Sir William, and now to his creditors, were stented to L.256. Upon all which, the kirk-session, and Mr. Archibald Turner, minister there, charge Sir Ja. Stewart of Kirkfield, the provost, (it is a part of Camusbusnethen lands, that once belonged to my Lord Somervail, called Cowdailie,) and the remainant creditors of Sir William Dick, for the said sum of L.256, as the proportion of the stent-money payable out of the lands and abbey of North-Berwick, which sometime pertained to Sir William Dick; and that conform to the stent-roll cast upon the parish, conform to an act of their kirk-session; which act proceeded on a decret obtained by them against the heritors, in *anno* 1657. This charge, Sir Ja. for himself, and in name of the rest of the creditors, suspends: *1mo*, Because the letters are general, founded on no decret, bond, or other warrantable ground; as the very copy of the charge delivered to the suspenders, not condescending on any decret or other ground whereon the said letters were founded, proves. As for their pretended decret, obtained before the usurpers in *anno* 1657, they purposely suppress it, because, by act of parliament, all the lieges are allowed to quarrel these decreets, and that summarily by way of review, without necessity of reduction: *item*, Provided that whenever persons be charged on such decreets, that suspension shall always be granted upon caution: *item*, considering how much they have already exacted for that use: *item*, the arbitrary illegal way they have of exacting the same, the said letters ought to be suspended. *2do*, The suspenders, upon a former charge, paid L.360 to this use; and at the payment of it, the stent-masters collectors, now chargers, faithfully promised to demand no further of them for perfecting the said church; in respect of which promise the letters ought to be suspended. *3tio*, The suspenders are not heritors of the said lands of North-Berwick, but only creditors, and so countable for their intromis-

sion ; as even now, *de facto*, there is a process of count and reckoning depending at the instance of Sir William Dick's other creditors, against this suspender, wherein they refuse to allow him the sum of money already paid out by him, for building of the said church : and, therefore, till such time as the Lords determine in that, the suspender can neither be *in tuto*, nor *in bona fide*, to obey this charge, but behoved to suspend the same. *4to*, The very decret charged upon in 1657, ordains, that there should be a previous charge directed against the whole heritors of the parish, to meet and convene and stent themselves ; but so it is, there was no previous charge before this stent ; *ergo*, till such time there be a previous charge, the letters ought to be suspended *simpliciter*. *5to*, *In anno* 1653, the chargers did take a great gironel-house from the suspenders, to preach in till the kirk were built, for which they promised to pay yearly L.40 of tack-duty, (which gironel they have ever kept since,) and therefore craves compensation thereof with this stent. At the calling of this suspension, either party declared that they would hold the copy of the suspension for a principal. To the L.360 alleged paid,

ANSWERED,—Ought to be repelled, because not instantly verified. As to the gironel-house, no compensation, *quia non inter easdem personas* ; for it was the heritors that became obliged for the said tack-duty, and not the kirk-session, who charge now. As to that which is said of a previous charge, none is necessary, because the suspender compeared voluntarily by his chamberlain, Ja. Sandilands, and consented to the stent, as appears by the stent-rolls.

All which being considered by the Lords, they found the letters orderly proceeded, notwithstanding the reasons of suspension ; and therefore ordained them to be put to further execution, ay and while the suspender made [payment] of the sum charged for, to Mr. William Walker, now minister there, and the kirk-session thereof.

Suspender, Ja. Stewart. *Alt.* ———

Signet MS. No. 43, folio 15.

1664. *January 7.* CHRISTIAN RAMSAY and JO. HAMILTON, her Husband,
against GEORGE, LORD RAMSAY.

GEORGE, LORD RAMSAY, in December 1661, grants bond to Christian Ramsay, daughter to Mr. Simeon Ramsay of Whitehill, for 3500 merks, with L. 300 of expenses, and L.10 of penalty in case of failyie. This bond she registers in 1662 ; and with consent of Jo. Hamilton, saddler, burgess in Edinburgh, her husband, for his interest, charges him to make payment of the same. This charge he suspends ; because, *1mo*, albeit the said bond bear dated in 1661, yet the debt therein contained is an old debt, due by the suspender to the charger, conform to a bond long before the act of debtor and creditor ; which, at persuasion of Mr. James, now Sir James Ramsay, and Mr. George, advocate, her brother, he renewed to her ; and so the defender having taken the benefit of the said act of debtor and creditor, as is notoriously known to the clerk of the bill, no execution can