

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,