

nicles, (if he had any) for instructing of the verity of the said bond libelled. Conform to which ordinance, the pursuer's procurator condescended upon that he had an arrestment raised upon the said bond, which is a sufficient adminicle.

This condescension the Lords found not enough; therefore ordained the pursuer to produce the principal bond before sentence.

Which the pursuer doubting how he might do, at the next calling of this cause, the pursuer, in fortification of his said libel, offered him to prove by the defender his oath of verity *simpliciter*, that the debt acclaimed by the said extract was a true debt yet resting; and that it consisted in his perfect knowledge to be so; and that he had promised to meet with the pursuer to take order for payment thereof.

Whereunto it was ANSWERED for the said defender, that he was not obliged to give his oath as was craved, seeing the foresaid summons is not so libelled against him; and unless there were a new summons raised, he is not obliged to answer to these particulars the pursuer would refer to his oath.

Whereunto it was REPLIED, that it was in supplement of his summons, he was content to refer the said points to the defender his oath; *igitur*.

Which the Lords having considered, they, by the act of litiscontestation, find the said points probable by the defender his oath; and, therefore, assign the pursuer a day to warn him personally to compear personally to depone, both anent the passive titles and anent the truth of the debt referred to his oath. Upon which act letters are directed whereby he is summoned, personally apprehended; yet failyieing to compear, he was holden as confest, and decerned as heir to his father, *et aliis nominibus, titulis passivis et alternativis quibus supra*, to pay the said sum. This decret is twice in the register.

*Act.* Mr. Lawrence Oliphant.      *Alt.* Mr. Rodger Hog.  
*Signet MS. No. 32, folio 46.*

1665. *January 28.*      ROBERT BAIRD and ALEXANDER ANDERSON *against*  
SIR ROBERT HAMILTON of Silvertonhill.

SIR ROBERT HAMILTON of Silvertonhill, is charged by Alexander Anderson, merchant in Edinburgh, as cedent, and Robert Baird, bailie there, assignee, to pay L.931 addebted by his bond. He suspends upon that clause of the 62d of King Charles II. his first session anent debtors and creditors; whereby it is provided, that the Lords of Session shall have liberty to grant suspensions to such men as should use the benefit of the said act, provided they were charged for sums within L.1000, and that the Lords saw just reason why they should do the same. But so it is, the suspender has taken the benefit of the said act; the sum he is charged for is within L.1000, and yet it is utterly impossible for him, by reason of his other debts and cautionries, presently to obey this charge without a little breathing time; which the Lords, he hopes, will allow as a sufficient reason of suspension.

It being called, the Lords would not admit the same; but found the letters orderly proceeded, ay, and while the suspender should pay, &c.

*Suspender,* Mr. Jo. Harper.      *Alt.* Mr. Thomas Baird.  
3      *Signet MS. No. 33, folio 47.*