

cessors of the office, and was not otherwise inherent in the person of the receiver being become a private person; and therefore the Lords yet assigned a competent day to the suspender, to produce the present Thesaurer's declaration, anent the said back-bond and escheat, that thereafter the Lords might consider thereof, and discuss the reason of suspension, and verification thereof.

Act. Craig.

Clerk, Gibson.

Durie, p. 642.

No. 37.

---

 S E C T. VI.

Expenses in a Suspension.—A Party becomes personally liable by suspending, though not formerly.

1632. November 28.

ROBERTSON against GREIG.

No. 38.

Greig pursues before the Sheriff of Perth, one Robertson, for the mails and duties of a room alleged pertaining to the said Greig in life-rent, whereupon the said Greig obtained decret *in foro contradictorio*. Robertson suspends, alleging, that this decret was wrongously given out against him, because his father was heritably infeft in the said land, to the which infeftment the said pursuer had consented. It was answered, Ought to be repelled in respect of the decret given *in foro contradictorio*, where this defence was competent and omitted. It was replied, That if any procurator compeared before the Sheriff, he had no warrant of the party, by reason the suspender's right was so clear, and nothing would be alleged in the contrary, and that the parties were poor folks. The Lords would not put the suspenders to a reduction, but suspended the letters simply, and ordained to give to the charger 100 merks of expenses, and to give action against the procurator, if he compeared, but a warran. This was thought hard and against form.

Auchinleck MS. p. 228.

1634. November 14.

M'NAUGHTON against M'NAUGHTON.

No. 39.

A decret of poinding the ground being suspended by the heritor, a singular successor not personally liable, and the suspension discussed in the charger's favours; the Lords found, That the suspender was personally liable to pay all

No. 39. the by-gones contained in the suspension, and therefore that it was in the charger's option to poind the ground, or to sue the suspender personally.

*Fol. Dic. v. 2. p. 416. Spottiswood.*

\* \* This case is No. 11. p. 10546 *voce* POINDING THE GROUND.

---

1735. February 12. GORDON of Ardoch *against* LADY NEWHALL.

No. 40.

A liferentrix having obtained decret for certain quantities of victual, as the by-gones of her annuity payable in victual, and having discussed a suspension of the same, the question occurred as to the expenses. The suspender pleaded, That the victual ought to have been liquidated in the decret, and converted into money, and therefore he had good reason to suspend in order for a liquidation. Answered, It was the defender's part to have applied for a liquidation, upon this medium, that *loco facti imprestabilis succedit damnum et interesse*: The pursuer could not insist for such a liquidation, her claim was the *ipsa corpora*; and had the suspender thought proper to implement the charge by delivering over the *ipsa corpora*, she could not have refused the same, nor insisted for money. The Lords found expenses due. See APPENDIX.

*Fol. Dic. v. 2. p. 416.*

---

## SECT. VII.

### Execution of Decree of Suspension.

1681. January 18.

SIR JAMES DICK, and other Creditors of BAILIE MARJORIBANKS, *against*  
ALEXANDER CHAPELAND.

No. 41.  
When the letters are found orderly proceeded, the decree of suspension must be extracted before the first de-

Alexander Chapeland having obtained a decret against umquhile Bailie Marjoribanks, he gave in a bill of suspension, and the Lords ordained the cause to be discussed upon the bill; whereupon the Ordinary having heard the cause, found the letters orderly proceeded; but before extracting, Chapeland denounced Marjoribanks, being then a dying, and now dead. His creditors supplicated the Lords, showing that Chapeland had unwarrantably put the letters of the first decret to execution, and denounced the common debtor, whereby his escheat would fall;