

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;

and therefore he ought to bring back the horning, and cancel it, as unwarrantable ; because after suspensions is past, execution of the first decret is thereby suspended, till by an extracted decret of suspension the letters be found orderly proceeded, and be ordained to be put to further execution ; after which the charger may either put the letters upon the first decret to further execution, or take new letters upon the decret of suspension ; but before extracting, the suspender is still *in tuto*, and may apply to the Lords. It was answered, That after pronouncing of the decret, albeit not extracted, the charger might warrantably point or denounce upon the first letters, especially seeing the decret was warrantably extracted, without any stop, or application for one. *2do*, By the denunciation, right is acquired to the King of the defunct's escheat, which cannot be taken away summarily, without calling the King's officers. *3tio*, Whatever may be pretended in a suspension past the signet, yet this was but a bill with a deliverance to discuss thereon. It was replied, That the Lords have declared, that warrants to discuss upon bills of suspensions, are in all points equivalent to bills past the signet.

The Lords found that the warrant to discuss the bill was equivalent to a signet suspension, and that the letters upon the first decret could not be put to execution till a decret of suspension were extracted, and therefore granted suspension to the creditors without caution or consignation, but would not call back the horning till the King's officers were called.

Fol. Dic. v. 2. p. 417. Stair, v. 2. p. 834.

1687. November. JOHN HAMILTON against COLONEL BORTHWICK.

In the reduction of a horning upon these reasons ; *1st*, That the executions as registrated did not bear that they were stamped ; *2d*, The Lords having found in a suspension of the charge, that the charger, whose title was an assignation not intimated before the cedent's death, ought to confirm before extracting, which is in effect a turning the decret of registration into a libel, the debtor ought to have charged *de novo* upon the decret of suspension, whereas he was denounced upon the old charge ;

Answered : The registration of horning is principally designed for discovering the casualties of escheat due to superiors, and not like that of inhibition for publication to the lieges ; and the principal executions appear to be stamped. *2d*, Custom requires no new charge upon a decret of suspension.

Replied : All writs ought to be registrated as they are conceived ; and though the stamp itself be the subject only of sense, the words, " And I have affixed my stamp," ought to have been registrated as a principal part of the execution. *2d*, Though when a reason of suspension tends only to take off the charge in part, as when a partial discharge is produced, it is reasonable that the old charge go to execution *pro reliquo* ; yet it is otherwise, when a reason of suspension enervates

No. 41.
cree can be
put in execu-
tion.

No. 42.
When the
state of the
case is altered
during the
suspension,
the letters
ought not to
be found or-
derly pro-
ceeded, but
the decerni-
ture ought to
run in the
terms of a
new decree.