

*ergo* likewise the second. But it was thought that the King's right would preponderate this fiction. *Vol. I. Page 505.*

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1688. *June 5.* DOES A SUSPENSION STOP REAL DILIGENCE ?

It was queried if a suspension stops apprising, adjudging, and other real diligences; for it will stop a pointing, *ergo etiam* apprising: for pointing, or a search for moveables, must precede apprising. Some say this search is only *moris gratiâ*. Yet this answer seems not to be good; for if the messenger finds moveables to the value, he ought not to proceed to the apprising of lands; seeing the common law, as well as ours, has determined this rational method, that how long a debtor's moveables are able to pay, no distress shall be granted against his lands; and some conclude, that the suspension should bear a stop to real, as well as personal execution, otherwise it does not hinder real diligence. Others think that stop is implied, though not mentioned.

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1688. *June 6.* JAMES CUNNINGHAM *against* JAMES ANGUS.

THE case of James Cunningham against James Angus was advised; and the Lords found Cunningham the charger's oath did not prove the reason of suspension referred thereto, anent the price of the tyle at two merks the gilder; and find the same proves not the second and third articles of the account referred to the charger's oath: And suspend the letters *simpliciter*, for the sum of L.18:14s. Scots, as the price of the tyle brought home by the suspender, and L.24 Scots, contained in the precept produced: and find the letters orderly proceeded for the rest of the sums charged for, principal and annual-rents: and suspend the letters *simpliciter* for the penalty. Angus reclaimed against this, ALLEGING,—That the charger had deponed on sundry particulars not referred to his oath; and which needed not, seeing his acceptance of William Hay's precept did bind it on him; so that he cannot now return it back upon Angus.

This point was referred to Drumcairn.

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1688. *June 6.*

THE Justice-Clerk reported this case. One living in the West, is decerned, by the commissary there, to repair another's honour, whom he had defamed, by appearing in the church and craving him pardon before the congregation. He presented a bill of suspension, that he, being a Presbyterian, had taken the benefit of his Majesty's toleration, and so could not be forced to do penance in