

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

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

the church, whither he had not freedom to go, but should be remitted to the meeting-house.

The Lords repelled his reason of suspension, and ordained him to satisfy in the church.
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1688. *June 12.* MARGARET SETON *against* MARGARET CRAIG.

THE case of Margaret Seton against Margaret Craig, being advised, the Lords found Craig's uplifting the annualrents of her brother's part of the sum, in the town of Mussleburgh's hands, did not infer a general passive title against her, as heir to her brother, but only *quoad valorem*, for restitution, and for affecting her brother's part, seeing she had a probable ground.

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1687 and 1688. RICHARD CUNNINGHAM *against* The DUKE and DUCHESS of HAMILTON.

See the first part of the Report of this case, Dictionary, page 12,328.

1687. *July 14.*—IN Richard Cunningham's case against the Duke and Duchess of Hamilton, mentioned 18th March 1686:—it was ALLEGED,—This being a debt of Duke James's in 1637, and the present Duchess, his daughter, having the estate, not as heir of line to him, but as heir of tailyie to Duke William, her uncle,—his heirs of line must be first called, and discussed; seeing they condescended on a subject of discussion, *viz.* the Lady Southesk is infest as heir served to Duke William, her father, in the barony of Innerwick.

ANSWERED,—This is a dilator defence after peremptors of payment were proponed, and after acts, commissions, and reports in the cause, and witnesses led on presumptions of payment.

REPLIED,—It was already proponed, but received no answer; and so, not being repelled, is yet entire; and the acts are only before answer. And whereas it is alleged, that it is needless to call the Lady Southesk, seeing she will allege that the heirs of line of Duke James are bound to relieve her; it is answered,—There is another daughter of James's yet uncalled, *viz.* the Lady Cassilis: and the Lords found co-heirs behoved to be called, *Stair, 24th January 1672, Laird of Lusse*, where they would not so much as allow the heir of line to be called *incidenter* in the same process.

The Lords here found the heirs of line to Duke William behoved to be both called and discussed, ere the present Duchess (who is heir of tailyie,) be obliged to answer; but allowed an incident diligence for citing them in this same action, in regard that defence got no answer before by the act. *Vide 13th June 1688.*
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1688. *February 24.*—Richard Cunninghame's action against D. Hamilton being called; the Duke craved that Sir John Dalrymple, who was not yet ad-