

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.

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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.*

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## 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;