

An Inferior Judge that is Incompetent or suspected of partiality. It is founded on the Canon c. 66. De Appelatione, and Civil Lib. 8. De iudic. Lamb. And Appeals to both the English Law term of Prohibition, and Prohibition. Prohibition being a writ calling up to a High Court the Record of a cause depending before an Inferior Court, upon some kind of Injustice done there, which we term Devocation upon Iniquity; and prohibition being a writ to forbid any Court to proceed in a cause there depending, upon suggestion that the Edification thereof will be longer not to the said Court, which in Scotland is called Devocalion upon Incompetency. Suspension from the Office suspended is the writ implied, a Stop of Execution or Legal Diligence, till the Justice of the ground thereof be tried. This is some what of the Nature of a Suspension in the Law of England but differs from it in that that no Imprisonment or Excommunication is granted. Where as Suspension Stops Execution of a Decree already pronounced and executed.

These Preliminary Remedies of Devocation Suspension and Devocalion are far more Rational and Excellent for obtaining Speedy and effectual Justice than the old Appeals. For these Appeals took Rise from the Humour and Envy of parties, and were attended with huge Inconveniencies; besides the great Expence of Time and Money Required in prosecuting them thro' a Train of Superior Courts. All these at present are removed from Inferior Judges by order of the Superior and all persons moved there, may have immediate Redress by application to the Justice in the first or second Instance.

Devocations and Suspensions are procured, or refused by Devocalion or Interlocutor of the ordinary, upon Bills or Petitions offered to him for that End. And also they pass by the ordinary Bills of Worsening, Captivity, Arrestment, Inhibition, Law borrowed &c. and Bills of Summons, upon the faith of the Clerk of the Bills; or whom it is incumbent to certify that no thing pass but what is ordinary. And Hundred of such Bills being presented at once, one could not peruse them in the time allotted for his attendance. But Bills of Devocalion and his person are particularly considered by the ordinary.

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Ruled common to bills of Devocalion and Suspension.

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The Bill drawn and signed by a writer to the signet being presented to the Clerk of the Bills, he writes on the back thereof the day of presenting, and carries it to the Ordinary. Here these Bills being for Ingers Confession Bills can be passed or refused by no other private Lord except the Ordinary for the time in his proper Work: Nor can they be presented to his Lordship by any other than the Clerk of the Bills or his Servant, all of Febr. 9. Feb. 1678. The Ordinary considers the Reasons if they seem manifest, without Examining the Advocates, but his Name is a more exact Inquiry and more a long time referred to the time of discussing the cause. If the Reasons be plainly predominant or not contradicted, he refuses the Bill and marks that he does so on the back of the Bill. He must keep a Reserve Bill, and mark on the back of it, the Instructions of the Reapers provided. Which Bill or another Bill containing the same Matter of fact, and giving the former points upon Additional Arguments of Law or Reason, cannot be afterwards raised, i.e. the Desire thereof can not be granted by another Ordinary in his Work, nor can it in person non habet Impetitionem; but only by the whole Court in time of session, or by three Lords Met together in the Vacation, Acts of Febr. 9. Feb. 1678. Novem. 6. 1680. Whose Deliverance may be had upon a Report made to them by the Ordinary, or, in case of his Refusal to Report the Bill upon a petition offered to them by the party, he should his Reasons Relevant. For the same Reason Bills refused by the whole Lord in term time, cannot be passed upon the same Reasons by three Lords in the Vacation. Nor can a Bill then refused by such three Lords, be afterwards passed by them or any other three Lords, Act of Febr. 9. 1678. To obviate this objection against a Reserve Bill, it is usual to add or add New Reasons to the former; because Jurata Jurants give non profertur lingua. When a Bill is refused by an Ordinary, or by the whole Lords, another ordinary may pass a new Bill containing the former and Additional Reasons, or Reasons wholly new, if he find the same Reason. But at the presenting of such a Bill to the ordinary, the Clerk of the Bills must there with show to him the former Refused Bill that he may know, if there be any new Matter of fact

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