

No 18.

Answered, The question is not to be determined by the rules of compensation and recompensation; the parties ought to be considered as in a society for paying Muirton's debts; and it were unjust that one of them should state his payments at the time of making them, and bring down interest thereon to the time of fitting the account; and the other state only the principal paid by him without interest: The several payments ought to be applied to each other at the time they were made.

Observed, That Kilravock having paid a demand made upon him, which the others were obliged to relieve him of, interest was due.

THE LORDS adhered.

Act. Burnet.

Alt. A. Macdoul.

Clerk, Gibson.

D. Falconer, v. 2. No 27. p. 34.

S E C T. III.

Quod statim liquidari potest pro jam liquido habetur.

1616. *January 31.* E. of LINLITHGOW *against* LAIRD of AIRTH.

No 19.
Originally instant liquidation was not permitted.

IN an action betwixt the E. of Linlithgow and the L. of Airth, the LORDS refused to receive an exception of compensation, founded upon certain bygone teind duties addebted by the E. of Linlithgow to the Laird of Airth, because the same consisted in victual, notwithstanding that Airth was content to refer debt, victual, and process to the charger's own oath.

Fol. Dic. v. 1. p. 160. Kerse, MS. Fol. 245.

1626. *December 1.* LA. BALBEGNO *against* L. LAURISTON.

No 20.
Found as above.

IN an action betwixt the Lady Balbegno and, L. Lauriston, the LORDS would not receive an offer and allegiance of compensation of victual to meet the debt of a liquid sum, acclaimed by the other party, in respect the said offer was not *de liquido in liquidum*, conform to the 143d act, Parl. 12. Ja. VI. anent compensations, which so appoints the same; albeit the party compenser, to remove that scruple, referred both the verity of the debt of the victual, and also the liquidation of the prices of the victual, to his party's oath of verity, which supplied the instant verification, and liquidation, and was alike therewith, notwithstanding whereof the compensation was refused; but I think the party here was not present to depone, and albeit he had been present, it would have

been refused, seeing it was not found a debt by sentence; and that the party alleged, that if he had been pursued for that victual, he had grounds to elide that pursuit, whereby he would not have been found debtor therein. *I. C. Quod est liquido proximum compensari potest, (sicut hic apparet) sed ratio decisionis est, quia liquidum sit per testes, vel per alias probationes, non autem per confessionem. Ita L. ult. C. h. t. illud liquidari permittitur quod breviter liquidari potest.*

Fol. Dic. v. 1. p. 160. Durie, p. 240.

No 20.

1626. December 6.

CAMPBELL against LO. KINCLAIVEN.

IN a suspension betwixt Campbell and Lo. Kinclaiven; the LORDS would not admit a reason of compensation upon a debt of victual, owing to the suspender by him who was charger, to pay a liquid sum contained in the sentence obtained against the suspender, albeit the debt of the victual was instantly verified by writ, and the non-liquidation of the victual was alleged to be no impediment to the compensation, being referred to the oath of the charger; which the LORDS would not admit, because the debt of the victual was verified by a contract only, whereupon no execution was used; and if the party had been charged to pay the same, he had reasons wherefore he could not be debtor for the same.

Act. Stuart.

Alt. King.

Clerk, Hay.

Fol. Dic. v. 1. p. 160. Durie, p. 242.

No 21.
Found as above.

1674. December 11.

STUART against M'DUFF.

IN a pursuit for payment of a sum of money, it being *alleged*, That the pursuer had intromitted with moveables and goods, to the value of the debt libelled pertaining to the defender's father, for whose debt he was pursued; and that it was to be presumed, that he had got the said goods, in satisfaction of the same debt, unless he should allege and prove another cause;

THE LORDS found, That if the defence should be proponed in these terms, that the pursuer had got the said goods in satisfaction, and that they were *data in salutem*; the defence ought to be positive, and that the delivery of the goods was probable by witnesses; but the quality foresaid could not be proven otherwise, but by writ or the pursuer's oath: But if the exception was proponed, so as to infer compensation, viz. that the pursuer had intromitted with the said goods to the value of the debt; that it ought to be verified *instanter* by writ or oath.

Reporter, Castlehill.

Clerk, Hamilton.

Fol. Dic. v. 1. p. 160. Dirleton, No 200. p. 89.

No 22:
An exception of compensation proponed thus, viz. that the pursuer had intromitted with goods belonging to the defender, to the value of the debt, allowed to be verified *instanter* by writ or oath.