

found this reason of compensation relevant to be received against the assignee, as well as it would have been against the cedent; neither was it respected, that the charger alleged, that the compensation ought not to be admitted, in respect that the suspender was made assignee a year before the obligation libelled, whereby he borrowed this sum, now acclaimed, from the charger's cedent, at which time, if the cedent had been the suspender's true debtor, by no probability would he have granted him a bond of borrowed money, if he then had been debtor of these sums, with which he compenses; for, with what probability can it be supposed, that a creditor will borrow sums from his debtor, before he be paid of the debt owing by him, from whom he borrows. Likeas, the bond bears, 'That the Captain renounces all exceptions of not numerate money, and all other exceptions whatsoever, competent in the contrary;' and this right being then in the Captain's person, when he borrowed the sum libelled, it must be presumed to have been paid. Likeas, before any intimation made by the Captain of his right to these bonds, wherewith he compenses, Forsyth's assignee raised inhibition against the suspender, upon the bond libelled; which allegiance the LORDS repelled, and notwithstanding of the same, sustained the reason of compensation, and suspended the letters *simpliciter*.

*Fol. Dic. v. 1. p. 166. Durie, p. 885.*

1663. *January 22.*

WALLACE *against* EDGAR.

IN this case, recorded *voce* ASSIGNATION, No 26. p. 837. the decision was the reverse of that of Forsyth against Coupland (*supra*). See No 119. p. 2652. and No 121. p. 2653.

1664. *February 13.*

HODGE *against* BROWN.

MR ROBERT HODGE pursues Robert Brown, merchant, for certain duties of land in Leith, possessed by the defender belonging to the pursuer. It was *alleged*, That the defender ought to have allowance of certain profitable expenses, wared out by him upon the house. It was *answered*, That the defender possessed the house as succeeding in the vice and place of Andrew Brysson, to whom the pursuer by tack set the houses for a duty simply, without respect to any charges to be wared out by the tacksman; so that what the tacksman built or repaired, it was on his own hazard and charge, there being nothing conditioned therefor. It was *replied*, That the defender was only convened as possessor; and, as possessor, he ought to have allowance of what he profitably bestowed. It was *duplied*, That what he bestowed without warrant of the master, and being in vice of the tacksman, he can be in no better case than the tacks-

No 116.

right, but not intimated to the cedent until after the assignee had used inhibition against the debtor.

No 117.

No 118.

Compensation upon a debt due by a tacksman to his sub-tenant, was found competent to be proponed against the master; compensation being payment in law.