

and omitted was always sufficient against any suspension or reduction thereof; and therefore the common course was to be absent in the first decret, and to suspend as oft as particular reasons could be founded on, to the great vexation of the people, and delay of justice, which therefore is well remedied by the late act of regulation, declaring, That whatsoever was competent and omitted against any decret principal, or decret of suspension *in foro*, shall not be received thereafter; and therefore the excluding of compensation *post sententiam* by this statute, is chiefly in relation to decreets in absence, for if the decret was *in foro*, the common exception of competent and omitted, which was always in vigour against the first decret, would have excluded compensation, yea payment itself, and so the statute was needless, unless it had been to exclude compensation against decreets in absence.

THE LORDS found that compensation was not receivable against decreets in absence by the foresaid statute, unless the decret were made null, and turned into a libel by improbation of the executions, or by fraudulent and clandestine taking away of the executions, or any other nullity.

*Fol. Dic. v. 1. p. 165. Stair, v. 2. p. 456.*

1678. February 5.

LOGAN *against* COURTS.

COURTS having obtained decret before the Magistrates of Aberdeen against Logan, he suspends on compensation, *alleging*, though the decret bears compensation, it bears no mandate, and that the suspender was out of the country at that time.

THE LORDS found, That the compensation was not relevant *post sententiam*, though the decret had been in absence, unless the decret were annulled by improbation of the executions, or otherwise, in respect the act of Parliament anent compensation allows the same only *ante sententiam*, and not thereafter.

*Fol. Dic. v. 1. p. 165. Stair, v. 2. p. 608.*

1683. January.

NICOLAS BARCLAY *against* ALEXANDER CLERK.

A party, against whom a decret in absence in his minority, was recovered by an assignee, raised suspension and reduction upon a reason of compensation on a debt due by the cedent; it was *alleged*, That, by act of Parliament, compensation is not receivable after sentence, and the act making no exception of minors, the suspender's omission to propone compensation *debito tempore*, must cut him off from the benefit thereof; as the short prescriptions, where law doth not expressly except minors, such as possessory judgements, creditors not pursuing within three years after the debtor's death, run against minors.

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No 103.

Compensation not receivable against the decret of an inferior court.

No 104.

Compensation allowed even after decree, when the charger is *vergens ad inopiam*.