

## COMPENSATION AND RETENTION.

1777. February 28. SLIGO *against* FOTHERINGHAM.

ALEXANDER Knight, merchant in Rotterdam, having drawn a bill upon John Fotheringham, which was accepted, indorsed it to John Sligo, value in account with Alexander Knight. Sligo pursued Fotheringham for payment of this bill; who suspended upon this ground, That Sligo was owing to him a greater sum, for which action was depending, at his instance, before the Court of Admiralty, and for which he claimed compensation, at least retention. Answered, *primo*, That, whatever was in this point, it could have no effect as to the bill in question, which was truly in Sligo's person as trustee for Knight, whose debts, about Aberdeen, he was in use to collect; and, indeed, the fact appeared from the tenor of the indorsation. But, *secundo*, Compensation there could be none,—a liquid debt could never be compensated by one not liquid; and, *tertio*, As little could there be retention, for, though this was allowed in certain cases, on the head of equity, yet, in this case, there was no equity in allowing it; the defender, Sligo, in the process before the Admiral, having found caution *de judicio sisti et judicatum solvi*.

The Lord Eliock, Ordinary, repelled the first reason of suspension, but sisted process till the action before the Judge-Admiral was determined. But the Lords altered,—found the letters orderly proceeded, and the suspender liable in the expense of the extract.

## CONTRACT OF MARRIAGE.

1776. December 21. RICHARD and MARY DICKS *against* LINDSAY and OTHERS, Trustees of Bailie Dick.

ROBERT Dick, dyer in Jedburgh, in his contract of marriage with Margaret Ainslie, disposed to the children of the marriage, *which failing, to his heirs and assignees, the hail heritable and moveable subject that should pertain and belong to him at his death*. At this time, Robert Dick had a small stock, and his wife the liferent of four acres of land, as the widow of a former husband.

Of this marriage there were two children, Richard and Mary, and their father, after acquiring a fortune of about £3000 sterling, entered into a second marriage, but of which there was no issue.

Richard, the son, proved a wild dissipated lad; begun as a packman; twice