

1610. *December 20.* OGIIVY *against* NAPIER.

No 47.
Compensation was admitted against an assignee, tho' the debt, which was to compensate the other, was contracted after the assignation; but it was before intimation.

IN an action of reduction pursued by Mr David Ogilvy *contra* William Napier, for reducing of a decret recovered at the instance of the said William *contra* Patrick Muscrop, for the which Patrick the said Mr David was cautioner, the LORDS sustained an action upon compensation, viz. that Mr David being cautioner for Robert Joyssie, cedent to Mr William Cuninghame, for the sum of 1200 merks, the time of the assignation made by Robert Joyssie to William, he, before the said assignation, at the least before the intimation thereof, made payment to Mr William Cuninghame; and consequently, as the said debt, it might compensate against Robert Joyssie, so it must compensate against the said William Napier, notwithstanding it was *answered*, that compensation could be only competent to him for a debt owing before the assignation.

Fol. Dic. v. 1. p. 161. Kerse, MS. fol. 245.

1611. *January 16.* CARNOWAY *against* STEWART.

No 48.
Compensation was admitted against an assignee.

IF I be addebted to any man in a sum of money, and he make me a posterior obligation of another sum, that last bond will not take away nor relieve me of my former debt by presumption, as if he would not have given me a bond if I had been addebted to him. And he that is addebted to me, and I to him, cannot, by his assignation of my obligation to a third party, prejudge me of my exception of compensation, but the same will be as competent against the assignee as it would have been against the cedent.

Fol. Dic. v. 1. p. 161. Haddington, MS. No 2092.

No 49. 1615. *January 13.* SEMPLE *against* SEMPLE.

IN an action betwixt Bryce Semple and John Semple of Willands, the LORDS fand, that a bond made by the said John Semple to Thomas Semple of Cathcart, of 400 merks, could not be compensated by another bond of the like sum made by the said Thomas Semple to the said John, and that because the bond, whereupon compensation was craved, was twelve years before the said bond made to the said Thomas Cathcart; and that Bryce Semple was assignee, against whom the said anterior bond could not compensate.

Kerse, MS. p. 245.