

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.