

*Answered* for the pursuers: The obligation in a tack for payment of the rent, is more a conditional obligation, than an obligation *in diem*; seeing the tack-duty is only payable, on condition the master or setter perform his part; and conditional obligations never afford a ground of compensation. And as arrestment (though it affects all moveable sums due to the arrester's debtor), carries no more of a tack-duty than the current term; no more can be the subject of compensation.

THE LORDS sustained the compensation and retention only for the tack-duties that fell due before intimation of the pursuers' assignation; but preferred assignees to the subsequent rents.

*Forbes, p. 328.*

No 61.

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S E C T. VII.

Effect Relative to Executors and Executors-creditors.

1628. November 12. GILBERT WILLIAMSON *against* ELISABETH TWEEDIE.

AN executor nominate having confirmed the defunct's testament, *eo ipso* becomes debtor to the legatars, to whom the defunct left in testament any legacies; so that if the executor convene any of the legatars for a debt owing by them to himself, the legatar may compensate that debt wherefore he is convened by the executor, with the legacy left to him by the defunct, and the executor will not be heard to say that there can be no compensation until the legatar obtain sentence against him; seeing it may be nothing will be due to him of his legacy, or at least not all, by reason the testament is exhausted.

*Fol. Dic. v. 1. p. 162. Spottiswood, (EXECUTORS.) p. 118.*

No 62.

A legatee may immediately plead compensation against an executor confirmed, to whom he is debtor.

1662. February 8. THOMAS CRAWFORD *against* EARL OF MURRAY.

THOMAS CRAWFORD, as executor-creditor, confirmed to umquhile Robert Inglis, as assignee by his relict, for satisfaction of her contract of marriage, pursues the Earl of Murray for payment of the sums confirmed, addebted by him to the said umquhile Robert.—The defender *alleged* compensation, because he had assignation to a debt due by the said umquhile Robert, which, as it would have been relevant against Robert himself, so must it be against his executor.—The pursuer *replied*; 1st, *non relevat*, unless the assignation had been

No 63.

Compensation against the executor, is not competent to a debtor of the defunct, taking assignation to one of the defunct's debts.