

This decision agrees with the act of Parliament; but the same was never observed to my memory before this time; for the LORDS have ever been in use to admit compensation by way of suspension, notwithstanding of this act of Parliament, which while now was not *in viridi observantia*. The like was done January 17th 1632, ———— *contra* ————, where compensation in a suspension was not received, after sentence given against the party compearing, the compensation being then competent before the sentence, and not then proponed. See SUSPENSION. •

Act. *Chaip.*

Alt. ————

Clerk, *Hay.**Fol. Dic. v. 1. p. 165. Durie, p. 240.*

* * Spottiswood reports the same case :

IN a suspension raised by the Viscount of Stormont against William Duncan, the LORDS would not sustain compensation, albeit *de liquido in liquidum*, in respect the decret sought to be suspended, was given *in foro contradictorio*, and that compensation being then competent, was not proponed before the giving of the said decret. *Fol. Dic. v. 1. p. 165. Spottiswood, (COMPENSATION.) p. 40.*

1632. February 17.

WALKER against MAINQUHAIR.

IN an action pursued by one Walker against Mainquhair, wherein decret was obtained by the pursuer, the defender raises suspension and craves compensation of a just debt alleged, owing by the pursuer to the defender, which he instantly verified. It was *alleged*, By the act of Parliament, Ja. VI, Parl. 12th, cap. 143, no compensation ought to be allowed after decret; which allegiance the LORDS sustained, in respect of the act of Parliament, although it was thought by many that the act was hardly conceived. *Fol. Dic. v. 1. p. 165. Auchinleck, MS. p. 30.*

No 100.
Found as
above.

1662. June.

THE EARL OF MARSHAL against BRAG.

THE Earl of Marshal obtains a decret in his own court, against his tenant Charles Brag, for payment of a certain quantity of farm; which was suspended upon this reason, That he ought to have compensation of a liquid debt owing by the Earl to him. It was *answered*, That the compensation is not receivable *post sententiam* by the act of Parliament 1592. It was *replied*, That an act of a baron court is not to be repute such a sentence as that act means by; seeing such sentences are only against tenants for their masters' duties, wherein defences consisting *in jure*, are proper to be disputed, neither can tenants have the benefit of advocates in such courts.

No 101.
Compensation received
in a suspension of a decret
of a baron court.

THE LORDS sustained the compensation by way of suspension.

Fol. Dic. v. 1. p. 165. Gilmour, No 41. p. 31.