

No 12. the article is liquid ; and, as payment within the legal will annul an apprising, so will compensation, which is equiparate in law, though the case would not be alike in a wadset against a singular successor.—THE LORDS found the defences against this article relevant, viz. that the article was not liquid by a sum, constitute expressly for a price ; and that it being *alleged*, that, in the decret, this allegiance was past from, and an express reservation that it might be made use of against any other just debt than that which was in the decret, whereupon the apprising proceeded.—THE LORDS had also consideration, that the legal of the apprising was not yet expired.

Fol. Dic. v. 1. p. 160. Stair, v. 1. p. 202.

No 13.
Compensation on a claim of relief, was rejected.

1665. *January.* CUNNINGHAM *against* DENNISTON.

JAMES CUNNINGHAM charges Henry Denniston for payment of a certain sum due to him by bond, who suspends upon this reason, That the said James being curator to the children of the deceased William Wilson, the suspender stands cautioner for him in the act of curatory ; and true it is, that by the charger's mal-administration the suspender is under hazard, the children having intented an action, at least being ready to intent an action against him, for removing him as suspect ; and therefore the suspender ought to have retention.—It was *answered*, That the suspender is not distressed ; and there is no such action intented, neither is there any reason for it ; and the money charged for, was borrowed after the suspender became cautioner, and bound himself to repay it faithfully.

THE LORDS found the letters orderly proceeded, reserving to the suspender action as accords in the law against the charger, for finding new caution, or for removing him as suspect.

Gilmour, No 122. p. 90.

No 14.
Liquidation by witnesses rejected.

1676. *February 9.* A. *against* B.

IN a suspension, a reason of reduction is libelled, viz. that the charger was debtor to the suspender upon account of a freight ; and it was offered to be proven by the charger's oath, that he was so debtor, and by witnesses what the freight extended to.

THE LORDS found the letters orderly proceeded ; and that compensation was *de liquido in liquidum*, and not *de liquidando* by witnesses.

Dirleton, No 326. p. 157.