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reason resolving into a compensation could not now be admitted, unless the warrandice had been made liquid by a decret against the said Nicolas, as having contravened; neither is there any intimation produced, or diligence done by the suspender, upon the said assignation, whereupon only he could have had his recourse against the said Nicolas; and she being now dead, the reason cannot be sustained against her assignee, at least if it were found a ground of compensation. It can only be sustained against the charger, who is a singular successor, from the time of the raising that suspension, and insisting upon that reason. —THE LORDS, finding that the reason of suspension being founded upon writ, making the charger's cedent debtor upon the clause of warrandice, and the contravening thereof, which was proven *scripto*, did sustain the same against the charger, who was assignee, unless he could allege against the discharges produced, for instructing of contravention of the warrandice; but the reason resolving in a compensation, there was debate among the LORDS *a quo tempore* it should be sustained, whether from the date of the assignation bearing the warrandice, or from the time that it was insisted on in the suspension; and at last it was voted to be only sustained from the raising of the suspension, and insisting thereon, upon these reasons, That the charger was a singular successor, and did intimate his assignation during the cedent's lifetime, who might have elided the same in law, there being nothing produced but extracts of her discharges; likeas the charger being assigned for an onerous cause, and having intimate his right to the suspender, did never make mention of this compensation until after the death of the cedent; so that it ought not to militate against him but from the date it was insisted on, albeit it would have been sustained against the cedent since the date of the assignation and warrandice.

Gosford, MS. No 791. p. 498.

1675. December 4. WATSON against CUNNINGHAM.

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It was found, that money may be compensated by debursements of money from the time of debursement, or intromission with money-rent, but not by victual or any prestation, until that be liquidated or reduced to money.

WATSON of Glentop having charged Robert Cunningham upon a bond of borrowed money, which he suspends upon compensation of debursements by him for the charger, in reducing an apprising, and several other affairs, and for allowances to his own servants of meat and drink that the charger got in his house, and for his own service; which being referred by the charger to the suspender's own oath, he deponed; which being advised by the LORDS, this question arose, *a quo tempore* the compensation should take effect, whether only from the date of the sentence, by which it is liquidate, or from the time the oath prove it was due; the ground of the doubt being, that compensation is only competent *de liquido in liquidum*, and therefore can have no effect till the liquidation, which was not till this sentence; for by our custom, no debt is counted liquid till it be determined by a sentence, and thereby have *paratam executionem*.

THE LORDS found, That liquidation requisite for compensation did only import that both debts were of the same kind, to be estimated as a fungible quantity, and therefore money may be compensated with disbursements of money, from the time of disbursement or intromission with money-rent, but not with victual, or any prestation, until the same were liquidate or redacted into money; and therefore the LORDS allowed the compensation of the suspender's disbursements, from the time they were given out, but of the modification for his own service allenary from the time of the decret, liquidating the same.

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Fol. Dic. v. 1. p. 167. Stair, v. 2. p. 375.

* * Dirleton reports the same case, naming the parties CUNNINGHAM
against MAXWELL.

A BOND being suspended upon a reason of compensation, viz. that the suspender had disbursed diverse sums, (confrom to an account) for the charger; and the said reason being referred to the charger's oath, and deferred back again to the suspender's oath; it was debated among the LORDS, *a quo tempore* compensation should be sustained; whether from the time of the disbursements, or from the time the same was liquidate and cleared by the suspender's oath; and it was found, That compensation should be sustained from the time of the disbursements, seeing the said sums then grew to be due.

Debts being illiquid, either because not constituted by writ or decret, or because they are not due in money but in victual, or such like, which must be liquidate as to the prices and value before there can be any execution for the same; the question may be of greater difficulty as to the last, seeing *compensatio* is *solutio*, and *ipso jure minuit*; whereas a debt in money cannot be said to be payable, and far less to be paid in victual, unless the creditor be content to be satisfied that way.

Dirleton, No 309. p. 152.

1678. July 26. The LAIRD OF POURIE against HUNTER.

POURIE pursues reduction of his vassal Hunter of Burnside his infestment, *ob non solutum canonem*, the infestment bearing a clause, That it should be null if two terms run in the third unpaid.—The defender *alleged* absolvitor, because he produced a discharge for the year 1672, and precedings; and as to the year 1673, he offers to prove, that he delivered the feu-duty to Pourie's servant in his own presence, without contradiction; and though it was sent back to him *ex post facto*, yet it was sufficient to purge an odious clause irritant, being now offered to be furthcoming at the bar; and as to the subsequent years, he offers to prove offers were made before the three terms were run; *2do*, The pursuer *intus habuit*, being debtor to the defender in a liquid sum exceeding the feu-

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Compensation not sustained to purge an irritant clause.