

payment and satisfaction of Ruscoe's principal sum, at each term as they fell due by the tack, to defalk *pro tanto*; for where one intromits with a *corpus* or a fungible, the liquidation *ex post facto* must retract and draw back to the time it fell due, especially if there was a *mora* in paying it *debito tempore*; for then *obligatio crescit ratione moræ*. Answered, The value can only be imputed from the time of the liquidation of the price of the butter and widders, conform to the probation, and the Lords' interlocutor thereon; for money can never be compensated with a *species* till it be estimate, and so converted into money; and it was so found, 4th December 1675, Watson *contra* Cunningham, No 144. p. 2684. And Stair, *tit. LIBERATION FROM OBLIGATIONS*, is express, that farms and services can only compensate clear bonds from the date of their liquidation, and no sooner, unless it were money-rent. Put the case, a master is owing his tenant 1,000 merks by bond, the tenant is again debtor to him in a year's rent, (of ten chalders of victual), the tenant requires his money, will any lawyer say, the master will get immediate compensation to stop execution on his bond because his tenant owes him? For a *corpus* and a liquid sum are not compensable, being of different kinds; and therefore the master must first obtain the sentence of a Judge, liquidating the victual to a certain price, and then only, and not till then, will the compensation meet. THE LORDS found, the widders and butter could only compensate and impute from the time of the liquidation, and not yearly, when they fell due. This imputation makes a great difference in the way of counting; for, as Brughton pleaded, it would have extinguished every year so much of the principal *sors*; but by this interlocutor, it only diminishes from the time of advising the liquidation; whereas in 21 years time (which was the currency of the tack), an annual imputation would have absorbed much of the sum, which an application now from this date leaves yet entire.

No 148.

*Fountainhall, v. 2. p. 676.*

1729. *June.* MARQUIS of Clidsdale *against* COCHRAN of Ochiltree.

No 149.

A debtor, who stood also bound for his creditor in greater sums, refused to pay, unless he were relieved of his whole engagements; THE LORDS found the defender liable to apply the sum wherein he was debtor for payment of the debts for which he stood bound, but gave him his option to pay one or other, as he thought proper, so far as the sum in question would extend, and that at the sight of the Lord Ordinary. See APPENDIX.

*Fol. Dic. v. 1. p. 168.*

1733. *January.* GRAHAM *against* DUKE of MONTROSE.

No 150.

A nobleman's commissioners having compted with his factor, struck a balance upon the whole save as to six articles, which were kept open to be adjusted by the con-