

intromitted \*, and also insisted in a process for her exoneration. It was further *objected* by the suspender, That she, by several receipts as tutrix and executrix, appears to be debtor to the Earl, and that these *pro tanto* ought to be a ground of retention or compensation.

*Answered* for the charger, That this charge, proceeding upon a former decret *in foro*, compensation cannot now be obruded, the same being nowise competent for an illiquid sum, after a decret for a liquid one ; her process for liquidation and exoneration as tutrix and executrix, being still a *lis pendens*.

THE LORDS repelled the compensation founded on my Lady's intromission as tutrix or executrix, the same being insisted for in a separate process for liquidation.

Act. Arch. Ogilvie.

Alt. Ro. Dundas.

Clerk, Mackenzie.

Fol. Dic. v. I. p. 159. Bruce, No 63. p. 77.

1749. *January 4.* ROSE of Kilravock, *against* The CREDITORS of KINSTERY.

SIR JAMES CALDER of Muirton disposed his estate, with the burden of his debts, to Hugh Rose of Kilravock, James Sutherland of Kinstery, William Brodie of Coalfield, and Alexander Dunbar of Moye ; with a view, as it would seem, that by the management of these gentlemen, the subject would be equal to the burdens ; and they disposed it, with absolute warrandice, to Rose of Kilravock.

The value of the estate falling short of the debts, the remainder of them which rested unsatisfied were divided amongst the disponees, who mutually became bound to pay the several bonds allotted to each of them.

Kilravock paid a debt undertaken by Kinstery, and adjudged his estate for it ; and appeared amongst his creditors in a ranking and sale raised by them.

*Objected* to his interest, Compensation by debts paid by Kinstery, which Kilravock was bound to relieve him of.

*Answered*, Recompensation by a yearly payment of eight chalders of victual to the relict of Sir James Calder, which Kinstery was obliged to relieve him of, effeiring to the proportion of the trust undertaken by him, having disposed the estate with absolute warrandice ; and the victual was stated with interest from Candlemas after the separation of each crop ; to which it was *objected*, That interest ought not to be stated ; whereupon the LORD ORDINARY, 10th July and 12th December, repelled the objection to the stating the account.

*Pleaded* in a reclaiming bill, Compensation is *de liquido in liquidum*, but the value of the victual was not liquidate till of late, and therefore cannot meet Kinstery's debts sooner than the liquidation.

\* See Another branch of this cause, *voce* HUSBAND and WIFE, from which the claim for bygone annuities mentioned on the margin appears.

No 17.

mentary to her son, after marriage with a second husband, claimed bygone annuities. Compensation was proponed upon her intromissions as executrix and tutrix. Repelled as illiquid.

No 18.

One of two parties having paid money for the other, on which he stated annual-rent ; and the other having paid victual for him ; it was found interest might be stated on the price of the victual.

No 18.

*Answered,* The question is not to be determined by the rules of compensation and recompensation; the parties ought to be considered as in a society for paying Muirton's debts; and it were unjust that one of them should state his payments at the time of making them, and bring down interest thereon to the time of fitting the account; and the other state only the principal paid by him without interest: The several payments ought to be applied to each other at the time they were made.

*Observed,* That Kilravock having paid a demand made upon him, which the others were obliged to relieve him of, interest was due.

THE LORDS adhered.

Act. Burnet.

Alt. A. Macdoul.

Clerk, Gibson.

*D. Falconer, v. 2. No 27. p. 34.*

### S E C T. III.

*Quod statim liquidari potest pro jam liquido habetur.*

1616. *January 31.* E. of LINLITHGOW *against* LAIRD of AIRTH.

No 19.  
Originally instant liquidation was not permitted.

IN an action betwixt the E. of Linlithgow and the L. of Airth, the LORDS refused to receive an exception of compensation, founded upon certain bygone teind duties addebted by the E. of Linlithgow to the Laird of Airth, because the same consisted in victual, notwithstanding that Airth was content to refer debt, victual, and process to the charger's own oath.

*Fol. Dic. v. 1. p. 160. Kerse, MS. Fol. 245.*

1626. *December 1.* LA. BALBEGNO *against* L. LAURISTON.

No 20.  
Found as above.

IN an action betwixt the Lady Balbegno and, L. Lauriston, the LORDS would not receive an offer and allegiance of compensation of victual to meet the debt of a liquid sum, acclaimed by the other party, in respect the said offer was not *de liquido in liquidum*, conform to the 143d act, Parl. 12. Ja. VI. anent compensations, which so appoints the same; albeit the party compenser, to remove that scruple, referred both the verity of the debt of the victual, and also the liquidation of the prices of the victual, to his party's oath of verity, which supplied the instant verification, and liquidation, and was alike therewith, notwithstanding whereof the compensation was refused; but I think the party here was not present to depone, and albeit he had been present, it would have