

found this reason of compensation relevant to be received against the assignee, as well as it would have been against the cedent; neither was it respected, that the charger alleged, that the compensation ought not to be admitted, in respect that the suspender was made assignee a year before the obligation libelled, whereby he borrowed this sum, now acclaimed, from the charger's cedent, at which time, if the cedent had been the suspender's true debtor, by no probability would he have granted him a bond of borrowed money, if he then had been debtor of these sums, with which he compenses; for, with what probability can it be supposed, that a creditor will borrow sums from his debtor, before he be paid of the debt owing by him, from whom he borrows. Likeas, the bond bears, 'That the Captain renounces all exceptions of not numerate money, and all other exceptions whatsoever, competent in the contrary;' and this right being then in the Captain's person, when he borrowed the sum libelled, it must be presumed to have been paid. Likeas, before any intimation made by the Captain of his right to these bonds, wherewith he compenses, Forsyth's assignee raised inhibition against the suspender, upon the bond libelled; which allegiance the LORDS repelled, and notwithstanding of the same, sustained the reason of compensation, and suspended the letters *simpliciter*.

*Fol. Dic. v. 1. p. 166. Durie, p. 885.*

1663. *January 22.*

WALLACE *against* EDGAR.

IN this case, recorded *voce* ASSIGNATION, No 26. p. 837. the decision was the reverse of that of Forsyth against Coupland (*supra*). See No 119. p. 2652. and No 121. p. 2653.

1664. *February 13.*

HODGE *against* BROWN.

MR ROBERT HODGE pursues Robert Brown, merchant, for certain duties of land in Leith, possessed by the defender belonging to the pursuer. It was *alleged*, That the defender ought to have allowance of certain profitable expenses, wared out by him upon the house. It was *answered*, That the defender possessed the house as succeeding in the vice and place of Andrew Brysson, to whom the pursuer by tack set the houses for a duty simply, without respect to any charges to be wared out by the tacksman; so that what the tacksman built or repaired, it was on his own hazard and charge, there being nothing conditioned therefor. It was *replied*, That the defender was only convened as possessor; and, as possessor, he ought to have allowance of what he profitably bestowed. It was *duplied*, That what he bestowed without warrant of the master, and being in vice of the tacksman, he can be in no better case than the tacks-

No 116.

right, but not intimated to the cedent until after the assignee had used inhibition against the debtor.

No 117.

No 118.

Compensation upon a debt due by a tacksman to his sub-tenant, was found competent to be proponed against the master; compensation being payment in law.

No 118. man, who, during his tack, if he had built never so much, it would have accresced to the heritor, without remedy or recovery of the expenses.

THE LORDS found no allowance should be granted.

In this same process, it was *alleged*, The defender ought to have compensation for such debts as were owing to him by the said Andrew Brysson, setter of the houses to him. It was *answered*, That the pursuer being heritor and master, ought to have his duty fully paid to him, without respect to any debt owing to the defender by Brysson. It was *replied*, That the tacksman being the setter of the houses to the defender, he was the defender's master, to whom, if the defender had made formal payment, he would have been assoilzied; now, compensation is payment by the law, or the equivalent.

THE LORDS allowed compensation, the debt being proven.

*Fol. Dic. v. 1. p. 166. Gilmour, No 97. p. 74.*

No 119.

Compensation pro-  
posed by a debtor  
against an assignee  
was found not relevant  
upon a debt of the  
cedent's, purchased  
by the debtor before  
the date of the  
assignee's right,  
but not intimated  
to the cedent until  
he was denuded by  
the assignee's  
intimation to the  
debtor.

1665. December 12.

FERGUSON *against* MORE.

IN the case, Ferguson *contra* More, the LORDS found, That compensation should not be granted against an assignee upon a debt of the cedent assigned to the suspender; unless intimation had been made to the cedent, before the charger's intimation of the assignation made to him by the cedent. See No 116. p. 2650.

*Dirleton, No 3. p. 4.*

1676. January 18.

CROKAT *against* RAMSAY.

No 120.

Compensation found  
relevant against a  
gratuitous assignee,  
tho' the liquidation  
was after intimation.

DONALD CROKAT, as assignee by John Donaldson to a bond of L. 400 granted to him by David Ramsay, charges thereon. He suspends on this reason, that the cedent was debtor to him for four years aliment. It was *answered*, *Non relevat*, unless the aliment had been liquidate before intimation of the charger's assignation, but it is now only liquidate by a subsequent decret, and is not receivable against the assignee. It was *replied* for the suspender, That whatever might be pretended of a subsequent liquidation against an assignee for causes onerous, yet this assignation is not for causes onerous, and the cedent, Donaldson, being good-brother to this assignee, the narrative of the assignation will not prove the cause onerous, unless it be proven *aliunde*, and the benefit of assignees their being in better case than the cedent, though he can only pursue as his procurator, is introduced by custom in favours of commerce, where the cause is onerous, but where the assignation is gratuitous, the assignee is in no better case than the cedent, and the cedent's oath will prove against him, and so must a posterior liquidation. *2do*, The assignation being fraudulent betwixt confident persons, to exclude this liquidation, the cedent having nothing, and the assignee knowing of the aliment before the assignation, the same ought to be received against him. *3tio*, The liquidation is only to modify the *quota* due for