

S E C T. XI.

Compensation or Retention, whether good against an *Actio Mandati*.

1672. November 9.

PEARSON *against* SIR ROBERT CRICHTON, *alias* MURRAY.

PEARSON having charged Sir Robert Murray for payment of a bond, he suspends and *alleges* compensation; and that Pearson, having been chamberlain to the late Earl of Annandale in Ireland, and after his decease, being continued by Sir Robert, to whom the Earl, according to the law of Ireland, had disposed his estate by testament for payment of his debt, that the charger had introritted with certain rents of these lands, which he referred to his oath, and craved compensation; who deponed and acknowledged his introrission, but *alleged* he ought to retain these rents, and have compensation in his own hand, by certain bonds due by the said Earl to John Greg, whereupon he is assignee; and the said Sir Robert being, by the disposition, liable to the Earl's debt, ought to allow the same.—It was *answered*, That these debts were not liquid by any sentence, and that no chamberlain, nor any other servant or depositary, could take assignation to his constituent's debts, and crave compensation thereupon; because the chamberlain being a servant, the property of his introrission remained in his master, and he could not refuse to deliver the same, whensoever demanded.

THE LORDS found that the chamberlain could not retain or compensate his introrission, by any of his constituent's debts, assigned to him after his introrission.

Fol. Dic. v. 1. p. 163. Stair, v. 2. p. 115.

No 80.

A factor cannot retain or compensate his introrissions, by any of his constituent's debts, assigned to him after his introrissions.

1678. July 24.

MARQUIS of DOUGLAS *against* MR WILLIAM SOMMERVILL.

WILLIAM SOMMERVILL, who had paid true debts without the Marquis's order, and in his compts sought allowance of them; the LORDS refused to allow him these payments by way of compensation, but reserved him action, since it is not properly a compensation between master and chamberlain. This was decided before, between Crichton, &c. (*supra*.)

Fol. Dic. v. 1. p. 162. Fountainhall, MS.

No 81.

Found as above.