

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 allenarly from the time of the decret, liquidating the same.

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

. Dirleton reports the same case, naming the patties 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-

No 144.

No 145.
Compensation not sustained to purge an irritant clause.

No 145. duties.—The pursuer *answered* to the *first*, an offer *non relevat* without consignation ; neither was compensation competent against feu-duties, wherein the acknowledging of the superior, by an address of an yearly payment, is more considered than the value of the feu-duties ; neither can clauses irritant, express in infeftments, be purged at the bar ; for they differ therein from the irritancy introduced by law, that these may be purged ; but where the investiture contains the clause ‘ to be null in case of three terms unpaid,’ the same cannot be purged.

THE LORDS did not sustain purging at the bar, nor the compensation ; but found the payment to the pursuer’s servant without contradiction, and the offer *debito tempore*, though without consignation, being now made furthcoming at the bar, relevant to purge the clause irritant, albeit the offer, without consignation, cannot stop the course of annualrents.

Fol. Dic. v. 1. p. 168. Stair, v. 2. p. 642.

* * * Fountainhall reports the same case :

THE LORDS inclined to think, the vassal should not compensate his feu-duties, with any debt his superior is owing him ; but it being a recognizance, it should be offered with humility.

Fountainhall, MS.

* * * Lord Kames cites a case, 17th July 1625, Lord Touch against Fairbairn, from Haddington, importing, that, contrary to the above, compensation had been sustained to purge an irritant clause.—Lord Haddington’s MS. in the Advocate’s Library, does not come down to so late a date. If the case shall be found, it will be inserted in the Appendix relative to this Title. *See IRRITANCY.*

1687. February 2. ROBERT WEMYS *against* GOODSIR.

No 146.

THE price of spuilzied goods found to compensate, and sist the course of annualrents of a debt due to the spuilzier, from the time of the liquidation, and not from the time of committing the spuilzie.

Fol. Dic. v. 1. p. 167. Harcarse, (COMPENSATION.) No 264. p. 63

No 147.

In a suspension of a charge on a bond, the suspender craved compensation of a sum due to him by

1711. July 10.

IRVINE *against* MENZIES.

CHARLES MENZIES, writer to the signet, being debtor to Mr Alexander Irvine of Saphock in L. 319, by bond, and charged thereon, suspends, that he must have compensation for L. 212, contained in a bill due by Irvine, to which he has right.—*Answered*, Your compensation cannot extinguish my debt ; because I