

1683. November 22.

JOHN SETON against ———.

## No 23.

In a pursuit on a liquid bond, compensation was pleaded on a charter party betwixt the pursuer and the defender's husband. The Lords decerned for payment of the bond, but superseded extract for 3 or 4 months, that the defender might have an opportunity to liquidate her ground of compensation, by proving, that her husband had performed the voyage.

JOHN SETON in Aberdeen, charges the relict of ———, on a clear bond; *alleged*, her husband, by a charter party with the said John, was creditor to him for the freight, because he had plied the voyages. *Answered*, This was not *compensatio de liquido in liquidum*, because his plying the voyages abode probation; which answer, the LORDS having sustained, they offered to prove the plying the voyages by the charger's oath, which is an instant verification; and the act being thus extracted, yet the LORDS on a new bill, allowed it to be proven *prout de jure*; seeing *quod mox potest liquidari habetur pro jam liquido*; they only decerned, superseding extract for three or four months, that if the debt be liquidate betwixt and that time, then the compensation was to be received; which was reversing the act, stopping a liquid debt upon an illiquid compensation; and allowing a term to liquidate it, which is *agere id indirecte quod directo fieri prohibetur*; and though it be materially just, yet it is a great relaxation of our antient form. See the contrary decided in Durie, 1st December 1626, Balbegno, No 20. p. 2564.; and 6th December 1622, Campbell, No 21. p. 2565.

*Fol. Dic. v. 1. p. 160. Fountainball, v. 1. p. 244.*

1686. January 14.

JAMES BROWN against Mr JOHN ELIES.

## No 24.

Compensation being proponed against a charge of a liquid debt, on the pursuer's father's intromission with a sum of money belonging to the suspender, the Lords allowed the suspender 5 weeks to prove his ground of compensation.

MR JOHN being charged on a clear liquid bond granted by him to umquhile William Brown, and assigned by him to his son James; he craved compensation, because William Brown the cedent was debtor to him, in so far as Elieston entrusted his name in an assignation of a debt owing him by Gordon of Buckie, and Macintosh of Borlam, and which trust did appear from his own compt-books, and an oath he had given in another process; and it was offered to be proven, that by virtue of this trust he had uplifted and intromitted with sums of money equivalent to this charged for. *Answered*, That compensations by the 143d act, Parl. 1592, must be *de liquido in liquidum*, and instantly verified, which this was not; and therefore the letters behoved to be found orderly proceeded, and his compensation reserved to him as accords. *Replied*, That brocard of the instant verification of compensations is not to be understood *in rigore Judaico*, but *cum aliquo temperamento*; lawyers laying down this for a principle, that *quod statim vel intra breve tempus illiquidari potest habetur pro jam liquido*; as *cigendus pro cincto*; and *dies inchoatus pro completo in favorabilibus*; and that *Menochius, lib. 2. centur. 1. casu 14.* debating how long time ought to be granted for liquidating a debt whereon compensation is craved, tells, that *Bartolus ad l. 46. § 4. D. de jure fisci*, allows two months; but he places it *in arbitrio judicis*; and the Lords, in the case of Seton, No 23. *supra*, allowed three months; and though this pursuer be an assignee, yet the compensation must meet him, whe-