

By suspension of a sentence of a Baron Court in force 18 March 1662 E. Marshal contra Bray Where tenants are only obliged to pay their rents, without disputing points of law for want of proper prosecutors: And an inferior Commission is executed in absence against Debtors, which was null for being pronounced in the Vacation time, and a Dispensation was not found to exclude the Defence of Compensation in the above Instance 20 March 1707 Forbel contra Grant in absence was not sustained against a Decree of a Court in absence 29 July 1676 Wright contra Thiel 19 June 1677 Dege contra Dege or a Decree in absence of Magistrates in absence of the party or not appearing were purged Statute. When a Debtor having several Debts owing to him in one person upon a Debt due to him by the pursuer, or the pursuer may sue upon another of these Debts owing to him by the Defendant, which former Re-compensation for understanding a surety or a creditor to be creditor to the Defendant in two different Debts. And the Defendant creditor to him in one and distinguish. What is owing to the Defendant is anterior to both Debts due to the pursuer, the first of these Debts he owes in may be for re-compensation due to the Defendant: Because these two Debts do not concur and extinguish one another, and the pursuer cannot recover with the second Debt because that never concurred with the Defendant's Debt, which was extinguished by the first Debt due to the pursuer, but if the pursuer insist for payment of both one of the Debts above said, the Defendant's Compensation shall be taken off by Re-compensation in the first of these Debts Statute lib. 1 Tit 18 16 vers. Compensation is sometimes divided. 2^o If a Debt be owing to the Defendant prior to both Debts due to the pursuer, he the pursuer to insist for payment whether of the first or second Debt Compensation was obtained upon the Debt owing to the Defendant, he cannot re-compensate with the other Debt due to himself. The compensation is Equivalent to Indefinite payment, which the Debtor may apply to Extinguish either of the Debts resting upon him, if he think fit; and a Creditor is not presumed to give bond to his Debtor, but only a Discharge and Allowance pro tanto to Statute. 3^o If what is owing to the Defendant was contracted in an Interval between the two Debts resting by him to the pursuer, the Pursuer Insisting for payment of the first Debt, against which the

The Defendant Craves Compensation on the Middle Debt, cannot have the compensation on the last Debt. But if Compensation on the Middle Debt be obtained in a judgment for the last Debt, the pursuer may re-compensate with the first Debt Statute. 4^o When in action, the pursuer craves Compensation in presence, and the Defendant replies upon the compensation, and the Defendant again craves re-compensation; the best course the Judge can take, is to obtain a count and Judgment and decree for the balance toward the Defendant to Ditch. Don't to get Compensation. Compensation being a natural, debt by the Civil Law, as payment of the same into the hands of the pursuer by virtue of the law, although the pursuer who have right to prosecute, and this is of it, and the both the one and the other be ignorant of the Debt, they have to compensate with C. 4 l. 10. l. 21. See Compens. C. 4 l. 10. l. 21. Hence the Law is such, that it is not sufficient to compensate the Debt, but the pursuer must be such as may arg. C. 4 l. 10. l. 21. See re-compensation. But the compensation shall be taken off by the pursuer, if it is objected: Seeing the pursuer till then cannot know it, and compensation without being a notice shall be effect. Thus a ground of Compensation is competent to a Cautioneer in a bond he gave to the creditor within seven years of the date, was not sufficient to support the Cautioneer's obligation after the seven years; no diligence having been done in the term of the bond (Statute 5 l. 1. 2. 3. 4. 5.) During the Cautioneer's of the said ground of Compensation. Albeit such diligence might have been made to effectual by the Cautioneer joining upon the Compensation: In respect the Compensation was never applied to Extinguish the Cautioneer's, and on the contrary the Debt which was the ground thereof was after ward paid to the Cautioneer, without respect to the Debt undertaken by him 16 Feb. 1711 Bourbon and her husband contra Montgomery. An adjudication was sustained that there was a ground of Compensation against the Debt, which the Defendant was not found obliged to deduct, seeing Compensation was not offered at obtaining of the adjudication 22 June 1680 Grant contra Grant. Nor is the Effect of having taken away by compensation upon a sum due to the party concerned, equal to that in the borrowing, not being actually applied by process.