

the same.—THE LORDS repelled the compensation, and preferred the creditors; else bankrupts might easily disappoint their creditors by granting bonds to their tenants, or obligations that they retain their rents till they be paid of such a sum; which ought not to militate against singular successors: Then Mr Dewar's procurators craved the creditors might assign him to their diligences *pro tanto* for his relief.—THE LORDS thought this unreasonable, unless to come in after their whole debts were satisfied and paid, but not to bring him in *pari passu* with themselves.

*Fol. Dic. v. 1. p. 166. Fountainball, v. 1. p. 790.*

1709. February 26. BOWHILL against JACKSON.

AN assignee to a tack pursued the tenant for the rent. The tenant proponed compensation, 1st, That his master owed him a sum *per bond*; 2dly, That he was cautioner for him in another sum, and had engaged himself in hopes of retaining his rent in relief.—THE LORDS found, that the intimation of the assignation interrupted the compensation for the rents which fell due after the intimation, but that there was *concursum debiti et crediti* for the prior years, and compensation applied.

*Fol. Dic. v. 1. p. 166.*

\* \* \* See The particulars No 61. p. 2612.

1711. January 23. WILLIAM ALISON against JOHN DUNCAN.

JOHN DUNCAN, late Provost in Dundee, being debtor to Robert Christie by bond, Christie assigns it to William Alison, his son-in-law, who charging Duncan, he suspends, and craves compensation, on this ground, that Christie the cedent was owing to Hunter of Baldivie a greater sum, whereunto he has right as executor-creditor confirmed to Hunter. *Answered*, The compensation never met nor concurred betwixt the two, because Christie was denuded by the assignation, and the same duly intimate to Duncan, before he had established the right of the debt due by Christie to Hunter in his person as executor-creditor; so there was never a *concursum debiti et crediti* betwixt Christie and Duncan. It is confessed, if Duncan had purchased the debt due by Christie to Hunter in his person, before Christie assigned Duncan's bond to Alison, or even before it was intimated, then the compensation would have met; but Christie being totally denuded by an intimated assignation before ever Duncan had right by his confirmation to Christie's bond to Hunter, it is impossible that can be a ground of compensation, but only for an action against Christie, and cannot meet his assignee. *Replied*, If the assignation had been for an onerous cause, then it is

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A party assigned a debt to his son-in-law. The debtor suspended on compensation, having acquired right to a debt due by the cedent. The cedent had been denuded, and the assignation intimated, before the suspender acquired right to the ground of compensation. Found, the compensation could not meet the assignee, but without prejudice to reduction on the act. 1621.