

Of Compensation

When two persons become mutually Creditor and Debtor to One Another, Whither for Money lent, or by one receiving and Laying out Money for another &c. Exception Made upon the One Debt, Excludes the other from payment of the other, either Wholly, if the Debts be Equal; or for so much as the best Debt amounts to, by deducting it out of the Greater. See Commercial. C. 4. C. 6. C. 130 Inst. de Action. Which Exception is Called Compensation, a comptensio, from the Ancient Custom of paying money in payments; the two Debts, by this Reciprocal acquittance, Mutual payment, being as it were indiged together in the same Balance. Positive Law founded on Natural Equity allows this in coming between the Creditor and Debtor, for executing a pro soluto per plura, quod Aque Commode fieri potest per paucos and to prevent Multiplicity of Suits: prostra enim petitio More est Restitutio; and it is more Natural that Every man retain what is due to him, in payment of that which he owes in his part to the other; whether it be the Whole Debt, if the Debts be Equal, or by deducting a Lesser Debt out of the Greater, and the Debtors giving to one another no other thing but their own acquittances; than to make so many payments as there are Debts by one of the two paying to the other what he owes him and receiving back again that which is due to himself, which is the nature of a Circuit or Compass of payments is Justly to be avoided. The Law of Compensation (called in England Stoppage) was first introduced in Scotland in the Year 1592. Ed. 1. 12. 76. But it is not allowed for payment in England Wood. Imp. Inst. 206. Nor is Compensation admitted in France except upon the things writ out of the Chancery, Greg. Tholof. Syntag. Jur. lib. 2. Cap. 22. n. 10. Groenoveg. de Legib. Abrey. l. 4. C. de Compens.

It is not sufficient to make a Compensation that there be a Debt on the One Side, and the other; but it is Moreover necessary that both the Debts be Liquid and Clear, that is, Certain and Liable to Dispute. l. ill. D. de Compens. which is called Debt quido in Liquidum the they have not paratum Executionem i. e. are not established by Decree. So the Lord found the

Liquidation requisite for Compensation. It Import only that Debts were off the same kind, to be Estimated only as a fungible Quantity, and that therefore Money might be compensated with Disbursements of Money from the time of Disbursement, or Intromission with Money lent, seeing a Must Money was then due; but that Compensation cannot be granted on Intromission with Money, or upon any prestation or service until the same is Liquidated or Estimated in a Sum into Money by the stat. 12. Decemb. 1673. Watton case in King's Bench. The Debt on both Sides ought to be Equally Liquid; because the Creditor would be injured, if his Debt were not Liquid, and he should be stopped upon performance of a Debt which is not Liquid or apparently Liquid. If Defendant the presence or the Judge to discern which Debt is Clear and Liquid and which is not, the Judge ought not to defer giving sentence for a Debt that is not Liquid, because a discharge of Compensation which would require a long Disquisition, and that such Demand ought to be referred to a Judge after war; so that the Judge ought to require a short Delay for such a Disquisition, if it can be done easily and in a short time. l. ill. D. de Compens. Compensatio non est danda. Upon the same Debts, soon as they become due, tho' it is after a long time for the Debt ought to be compensated. 23 Decemb. 1675 Keith contra. l. ill. n. 10. Groenoveg. de Legib. Abrey. l. 4. C. de Compens. l. 1. n. 10. If a creditor of Liquidation against a Mutual Debtor, sufficient to pay for a Disquisition against the Creditor or his Assignee, the not being in that Decree, it being obtained without collusion before the assignation of a Sum of Money, being contra. Strachan's Debtor by Bond receiving yearly for five ten years delivered to the creditor three Stone of Cloth before his annual work; the goods were his taken to compensate the Bond, the same being instantly verified and Liquidated by the Creditor's Debt, albeit no price then made or payment promised, and it would not have the effect understood as a Gratification or free gift, left such a preparative might be a Plea to Whitney 9 Feb. 1676 Ronaldson contra. Boydson. Upon an Express declaration by a Debtor to his Creditor was granted in payment of the Debt pro tanto a January 1677. Whitbel contra. Hymby. Compensation Upon Warrantice was found to take effect only from production of the writ in detaining the Distress and not a Plea, Warrantice of itself not being Liquid to found Compensation. 23 July 1673 Conick Shand contra. Feer. 2. The Debts must consist in Quantity. For one Species or body cannot compensate another. l. 4. C. de Compens. l. 1.