C. de Compens. L. 13. §2. ff. de Sig. et Hyp. L. 18 Pr. ff. de Sig. Act. As One particular horse cannot be brought in Compensation for another, far less a species of One Kind for Another; as a horse for an Ox. Therefore Money deposited cannot be Compensated with a Debt due by the Owner to the Depositary. L. ult. §1. C. de Compens. What is deposited being considered as a species, not as fungible: And if two persons had Reciprocally things belonging to Another in their hands, there would be no Compensation between them in this Case, but each would be obliged to Restore the things deposited in and received in C. de pos. Nor can Mutual obligations and factum fore Liquid compensable one Another. Reg. L. 31. ff. de Jud. L. 2 §7. ff. de compens. Bert. 100. But if Either party be obliged to Deliver a horse, he shall Stand &c. in General to the other. These obligations here indeed Commensurate and Liquid, and may be compensable. Mair Inst. vol. 1. 16. §6. vers. Compensation is described. Again the Debts being Subsisting and Compensable must be of the same Kind, as Money for Money, Oil for Oil, Corn for Corn, Wine for Wine, a Vessel, Heritable Bond &c. Cannot Compensate a Moveable Debt; nor vice versa can a Moveable Debt Compensate a Heritable. 22 January 1667 Clippan contra Hamilton. 12 Novemb. 1675 Hume contra Hume. But a Moveable Debt may be compensated by a Debt upon which an Apprising as Redemptio is led Eodem die inter Eosdem. 15 June 1675 Laird of Lag contra Forbes. Unless the Apprising were Expired and Either in Possession, Eodem die inter Eosdem. The Reason of the difference Because Apprisings and Adjudications are extinguished since the Legal by Intromission or any Manner of payment. Compensable was admitted against a Singular Succession in an Infeftment Annualrent upon Debts due by the Cedent before Infeftment was taken. 8 July 1680 Rankin contra Arnot. The Bond being then Purely Personal. A Debt bearing no Annual rent may compensate a debt bearing Annual rent; and the Sum in a bond Neither Registrate nor Containing a Clause of Registration may compensate another Sum due by a Registred Bond. 30. The Debts compensating and Compensated must be such as are already due, and not such as are conditional, or where of the payment is suspended to a day. L. 7. §. de Compens. which cannot be compensated till they fall due. Thus a Tenant who was Creditor to his Master purshued by assignees to his tacksman was Allowed Compensation and Retention only of his tacksman Duties that fell Due before Intimation of the purshuers Assi-

Assignation, and not of any Subsequent Rents which were found to Belong to the Purshuers. 2 Feb. 1709 Lord Bowhill and Nasmeth contra Jackson. we must reckon Among Debts which do not Enter into Compensation, those which all the Bleas and Evasions in themselves, may be Annulled by some Exception, which the Debtor may have against them. L. 14. §. de Compens. Thus he who is Debtor to a Minor, Cannot Compensate what the said Minor owes him by Virtue of an Obligation against which he may be relieved. Compensation Founded on by way of Exception hath been found not to subscribe. 20 March 1707 Forbes contra Hamilton. Because Compensation, speaks ipso Jure from the very Concurse of the two Debts, and Joining the Force of Interest, Relieving a Cautioner &c. and is competent to Either party against the other. Even an Assignee in an Onerous Cause at any time when his Debtor comes to be pursued or any other may brought in the same against him. And in Like Manner Dead brought, that a Sentence of Compensation to take effect by way of Compensation, was perpetual and did not prescribe. 10 July 1712 Sinclair of Quendale contra Murray. Also in 24 June 1712 inter Eosdem but now Compensation cannot be founded on a Debt after forty Years Prescription having intervened & Injustice could be Debtor and Creditor. July 1719 Carmichael of Bonnington contra Carmichael of Hamilton Say. Which is agreeable to Lord James Stewart's opinion, Answers to Direct. Debts fit. Compensation. The Reason is, because by the Roman Law Compensation be Effectual ipso Jure, by our Law it work only one Exception is ex officio Judicis, may be past from, and hath no effect till it be objected and Applied: Whereas Time it Operates Retro, if the Compensating Debt be then good or Unquarrelable, and no other Defence. Infra Pag. In short no Debts can Compensate or Counter, except those that can be offered in payment, since Compensations are Payment to L. 4. in fin. ff. qui pot. in pign. A Debtor being pursued or Charged may propone Compensation upon a Debt owing by the Creditor to the Debtor himself, Either Originally, or by Assignation from a third person to the grantee after the pursuit or Charge. Stair lib. 1. Tit. 18. §6 vers. Compensation by our Constitution. Compensation which Extinguishes Mutual Obligations ipso Jure, may be proponed by those who have no right to and Cannot discharge the sum with which they would Compensate. 13 July 1676 C. Bramfoord contra Cuthver. 7 January 1680 M. Bride contra Melvill. An Heir pursued for his predecessors debt, was Allowed to Compensate the same with a

Debt