

No 110. pay, upon the creditors finding caution, that Paterson will be law-biding for the counter claim.

It is acknowledged, he could not be bound to pay to Paterson himself (as he is a bankrupt) unless he found caution; and a creditor of his arresting, can be on no better footing. An arrester is in no better situation than an assignee; nay, he seems not to stand upon so good a one. Surely, an arrester is not such a singular successor, as to stand free from exceptions competent against his author. And this privilege competent to the suspender, of retaining the sum in his hands until Paterson the creditor should find caution, was competent against Paterson himself, before the arrestments were laid on; and therefore must be still competent; he cannot be deprived thereof by laying on of the arrestments.

THE LORDS found compensation not competent after decret, and that whether the debts on which it was pleaded, were in his person who pleads it, before the decret, or acquired after it; and remitted to the Lord Ordinary to hear parties on the retention.

Fol. Dic. v. 3. p. 149. C. Home, No 216. p. 358.

No 111.
Decided in
conformity
with No 106.
p. 2642.

1747. February 25.

A. against B.

ON a verbal report of an Ordinary, Whether compensation was competent after decree in absence, following on a summons against one of many debtors? THE LORDS demurred till precedents should be looked out; and a former case being condescended on, wherein the suspender had been admitted to plead compensation, in respect of that speciality that the decree had been taken against the defender called among many other debtors; the COURT judged accordingly, and 'allowed the suspender to propone compensation.'

*Fol. Dic. v. 3. p. 149. Kilkerran, (COMPENSATION & RETENTION.)
No 2. p. 136.*

SECT. XV.

Concursus Debiti et Crediti.

1629. January 20.

ROSS against BUTLER.

No 112.
The creditor
of a rebel,
cannot plead

N. Ross, donatar to the escheat of David Vauss, pursued Mr George Butler for the farms of the lands of Blawes, 1623, or prices thereof, belonging to the

rebel, and intromitted with by the defender.—*Alleged*, He ought to have retention of the sum of L. 200, addebted to him by the rebel.—*Replied*, No allowance of any debt of the rebel's to meet the donatar with, but only of that horn- ing whereupon the gift proceeded.—THE LORDS would not admit that com- pensation against the donatar ; especially, because of the time of the debtor's intromission with the rebel's corns, the said David Vauss was then rebel, and so he intromitted with that which was the King's, and could not allege he had *jus retentionis* of so much as pertained to the rebel.

Spottiswood, (ESCHEAT.) p. 103.

No 112.
compensa-
tion against
the donatary,
to his single
escheat,
claiming the
value of in-
tromissions
had after the
rebellion.

1629. June 27.

HAMILTON *against* HAMILTON.

ALISON HAMILTON sells the lands of Bothwellhaugh, to umquhile David Ham- iltion of Monckton-mains, who obliged her to infest him therein. Two or three years thereafter, David dispones the said lands again to her in wadset, re- deemable to her upon a sum. After David's decease, his heir having transfer- red the first contract in him, he thereafter makes another assignee thereto, who charges Alison to infest him, conform to the contract ; and she suspending, that she ought not to give him infestment, except that he grant back again to her the infestment of the wadset redeemable, conform to the second contract ; and which, she alleged, the assignee should do and fulfil, as his cedent, seeing the cedent having denuded himself of his right to the assignee, and he being other- wise *non solvendo*, the assignee therefore ought to fulfil.—THE LORDS found this reason ought not to meet the assignee, and ordained the suspender to charge the cedent, seeing these were two different contracts, whereof each one ought to have their own execution ; whereas, if these conditions had been contained in the body of one writ, the assignee also ought to have fulfilled the cedent's part. But here it was presumed, by great circumstances, that the last wadset was redeemed, and the sums satisfied ; therefore the LORDS were the more moved to reject the reason against the assignee. See MUTUAL CONTRACT.

Clerk, *Gibson*.

Durie, p. 452.

No 113.
Found, that
an assignee
was not af-
fected, by
obligations,
to which his
cedent was
bound in a
separate con-
tract, though
regarding the
subject as-
signed.

1631. July 1.

ELLIOT *against* ELLEIS.

THIS same question, (as in Inglis against M'Cubine, *voce* WRIT), occurring the same day again, betwixt Elliot and Elleis, the same decision was followed. And it being further *alleged* by the defender Elliot, who was convened for pay- ment of a sum contained in his ticket, addebted by him to one Elleis, factor in Campvere, at the instance of James Elleis burgess of Edinburgh, assignee

No 114.
A person was
pursued for a
sum contain-
ed in his tick-
et granted to
his factor a-
broad. He