

1629. *March 3.* FLETCHER *against* L. CRAIGIVAR.

No 74.  
Found in  
conformity  
with the  
above.

L. CRAIGIVAR being cautioner for one Irvine, and paying the debt to the creditor, being distrest by him therefore, and he being thereafter debtor to Irvine in a proper sum owing to Irvine by him, and Irvine being rebel, the donatar to his escheat seeking payment by special declarator of the sum owing to him by Craigivar, it was found, That Craigivar having paid as cautioner for Irvine a greater sum, before that Irvine, who should have relieved him, was at the horn, by virtue of which horning his escheat was taken, he might compensate with the donatar in the sum owing to the rebel, by the said payment of a greater sum for the rebel; which compensation was received against the donatar, the payment being made, as said is, before the rebellion.

Act. *Fletcher.*

Alt. *Lermonth.*

Clerk, *Hay.*

*Fol. Dic. v. I. p. 163. Durie, p. 431.*

\* \* Auchinleck reports the same case :

A DONATAR to a person's escheat, pursues the debtor for a sum of money addebted to the rebel. The debtor *alleges*, That he being cautioner for the rebel, was compelled to pay a greater sum for him than he was owing to the rebel, and that before his rebellion, and therefore ought to have compensation.—It was *replied* by the pursuer, That the King was not bound to pay the rebel's debt, nor to compensate.—THE LORDS allowed compensation of the sum paid before the rebellion.

*Auchinleck, MS. p. 29.*

1635. *February 3.*

INNES *against* LESLIE.

No 75.  
Retention of  
a debt due to  
a rebel at the  
horn, found  
competent  
to the debtor  
against the  
donatar, on  
account of  
the debtor's  
being cau-  
tioner, and  
under dis-  
tress for ano-  
ther debt, due  
by the rebel  
before his  
rebellion.

ONE INNES being donatar to the escheat of one Douglas, after general declarator, pursues one Lesly for payment of 400 merks, addebted by his bond to the said Douglas the rebel; and the said Lesly *alleging*, That he was cautioner for the said rebel to one of his creditors, before the said rebel's rebellion, for payment whereof he was distressed, and would be forced to pay the same, and therefore that bond ought to compensate the said cautionry; and he has just cause of retention of the same, for his relief of a part of this greater sum, which he was distressed for; and so this relief, *pro tanto*, being in his own hands, it ought not to be taken from him.—The donatar *replied*, That the fisk pays no debt of the rebel's, therefore the defender cannot obtrude this compensation against the fisk, albeit it might have met the rebel's self, if he had been seeking this debt from the defender.—THE LORDS found the exception relevant, and found that the defender might allow in his own hands this debt of 400 merks addebted by