

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

No 114.  
alleged the factor had goods of his in his hands beyond the amount. This plea was repelled, unless he would allege that the goods were sold, and the price in the hands of the factor.

thereto, that the said cedent being the defender's factor, was full-handed with as many wares pertaining to the excipient, as would in price extend to far more than would pay this sum libelled, with which he was content to compensate the sum; THE LORDS repelled the allegiance, and found the same had no relevant ground of compensation, because the defender alleged not, that the factor had sold the goods, and had the prices thereof in his own hand, *quo casu* it being so, the compensation was receivable; but the factor having only the goods to be sold, as occasion might offer, he was only obliged to the defender to compt; so that if the goods were not sold, he could be no further obliged, but to deliver the same to the pursuer again, and that could not compensate the defender's ticket of a liquid sum, to be paid at a precise time contained in the bond.

Clerk, Hay.

*Fol. Dic. v. 1. p. 167. Durie, p. 592.*

1632. November 27. LAIRD AITKEN'S Daughter against HOME.

No 115.  
A sum due to a pupil was not allowed to be compensated by the debtor, with a sum due to him by her father, her administrator.

LAIRD AITKEN'S daughter, who had a certain sum of money left to her by her good-dame, and the sum lent to Mr James Home, minister of , with consent of her father, as lawful administrator to her, charges the said Mr James for the sum. He suspends, *alleging*, That her father, who was lawful administrator, was addebted to him in as much as he was charged for; and, since she was a pupil, and could give no discharge, but her father, who was lawful administrator, must receive the money and give discharge for her, and seeing he has as much in his own hands already as might pay his daughter, the suspender ought to have compensation. To which it was *replied* by the pursuer, That the money charged for was the minor's proper money, and not given to her by her father, but by her good-dame; no debt owing by her father could compensate that her debt, which was neither liquid nor *inter easdem personas*. THE LORDS repelled the reason of suspension, and found no compensation.

*Auchinleck, MS. p. 30.*

1639. March 16. FORSYTH'S Assignee against Captain COUPLAND.

No 116.  
Compensation proponed by a debtor against an assignee, was found relevant, upon a debt of the cedent's, purchased by the debtor before the date of assignee's

CAPTAIN COUPLAND being debtor to William Forsyth in 1000 merks, and being charged by William Forsyth's assignee for payment; he suspends upon this reason, that Forsyth was debtor by two bonds to William Ogston in 1000 merks, and 500 merks; the right of which bonds and sums was devolved in the person of the suspender, and he was content to compensate this debt, for which he was charged, with so much of the sums foresaid *pro tanto*, owing by the charger's cedent, against whom, as the compensation would have been relevant to have met himself, so must it be against this assignee. THE LORDS