

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 compen- sation 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