

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.

1747. February 25.

A. against B.

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

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