

he should operate his own payment. In proof of this, he produced a letter from the debtor, acknowledging that the goods were left in his hands in security of a debt he owed him.—*Answered*, The letter was obtained *ex post facto*, after no-tour bankruptcy; and there is no evidence of an actual impignoration of the goods.—THE LORDS preferred the arrester. See The particulars, No 79. p. 749. *Fol. Dic. v. 3. p. 148.*

No 72.

S E C T. IX.

Effect relative to Donatars of Escheat.

1622. July 26.

DAVIDSON against L. BUCKIE.

IN an action of declarator pursued by — Davidson, donatar to the escheat of L. Essilmont, against L. Buckie, for special declarator of a bond of some money, which Buckie was obliged to pay to Essilmont; and which bond bore not that the party was resting owing the sum therein contained, but that he obliged him to pay the same, and had no cause therein expressed, for the which it was granted; the LORDS found, That the cause of the granting thereof might be proven by the witnesses insert in the bond; for albeit the bond was pure and simple in itself, yet seeing Buckie alleged that it was given for a special cause condescended on by him, and which should have been fulfilled to him by Essilmont to whom he was bound, and which was not fulfilled, no reason was he should pay the sum, being obliged *ex causa data, et non sequuta*, and which he offered him to prove, by the witnesses insert, as said is; which allegiance THE LORDS found relevant to be so proven, albeit the bond was in itself pure and simple, seeing the pursuer could not condescend upon any other cause, for the which it was given; but this allegiance THE LORDS would not admit against the fisk and donatar, but only against the party's self, to whom the bond was granted.—In this same process, THE LORDS found an allegiance of compensation, founded upon the like debt owing by the rebel to Buckie, relevant to compensate the debt acclaimed from him by the rebel's donatar, which is sustained against the donatar, to meet the donatar's action; likeas if it had been sought by the rebel's self. See ESCHEAT.

No 73.

In a special declarator, at a donatar's instance, against a debtor of the rebel; found, that compensation was proponable against the donatar, so as to meet this action, as if it had been objected against the rebel himself.

Act. *Nicolson et Lermonth.*Alt. *Hope et Lawtie.*Clerk, *Hay.**Fol. Dic. v. 1. p. 163. Durie, p. 33.*