

No. 3. 1735, July 24. DR LEARMONT *against* WATSON of Saughton.

THE Lords adhered to the interlocutor sustaining Saughton's defence of compensation by the expenses on the mother Lady Cockburn's funeral.

No. 4. 1738, July 28. CLERK *against* FERGUSON.

THE Lords adhered to their former interlocutor, finding that the debt due by John to James Murray, as it stood in Glendorch's person, (N. B. He had affected it on the act 1621, as creditor to William Murray the father.) was not compensable by the debt due by William Murray to John. The Lords were much divided, the President and several others being against the interlocutor, which seemed strange to me.

No. 5. 1740, July 24. LEITH of Leithhall *against* GORDON of Law.

THE Lords allowed the proof even by witnesses before answer, in order to rear up this retired bill as a debt. I own I thought it a most dangerous preparative in the law of Scotland,—and Arniston was of the same opinion.*—13th February 1739.

Vide supra, 13th February 1739, where it seems I have mistaken Arniston's opinion, or in the hurry misplaced these words, for he not only had been for the proof before answer, but now thought that without any proof at all Law's defence was good, and that this was not in the case of a *chyrographum redditum*. But all the Lords who spoke, particularly the President, differed from him. However it carried upon the question to sustain the defence.—*Renit.* Justice-Clerk, Drummorie, Dun, *et me*, and Strichen and Murkle did not vote. We all thought, (except Arniston) that the bill was plainly a *chyrographum redditum creditori*, given up by Law to Leithhall the acceptor, and by him to Leith, the drawer,—that no proof by witnesses ought to be admitted where writing ought, and uses to be adhibited, and that it was plain from the proof, that in this case Law himself knew what was the law, and thought at the time that he should have had a document in writing of his giving up the bill. I also thought the proof too weak and uncertain to elide the presumption of law,—that it was chiefly of conversations with Leithhall before giving up the bill how matters stood betwixt him and Law, and even of that he gave different accounts to different persons,—that there was no sufficient proof but value might have been given Law for it on the 23d January, when the bill was given up, and no proof whatever after that till Law's death on the 7th July, except the alone oath of the relict, which was not sufficient to create a debt even against her husband or son. On the 24th refused a bill without answers.

No. 6. 1739, Jan. 2. MAXWELL *against* CREDITORS of M'CULLOCH.

AT advising, it appeared that one of the bonds due by Sir William Maxwell to Sir Godfrey of L.2000 in 1683, was originally payable to Sir Godfrey himself, that another bond of L.1200 was taken, payable not to Sir Godfrey, but to one of his creditors, Andrew Houstoun, and only became due to Sir Godfrey upon Andrew Houstoun's operating his payment out of another debt in 1692, after all the debts due by Sir Godfrey

* Lord Elchies appears afterwards to have scored out the word "same," and added after the word opinion the words "of the interlocutor."