

1738. *June 30.—July 28.*

CLERK of Glendorich *against* FERGUSON of Townhead.

No. 4.  
Effect of fraud in  
reference to Com-  
pensation.

WILLIAM MURRAY, of Townhead, took a bond from his son John for L.50 sterling in name of another infant son James. After William's death, Clerk of Glendorich confirmed executor-creditor to him, and gave up this bond of James's in the testament, and obtained a decret of reduction and declarator against James, finding the bond was presumed William the father's money, and affectable by his creditors, and therefore carried by his confirmed testament, and against John decerning to pay the money to Clerk; and having thereupon inhibited John, and now pursuing reduction of a sale of his lands, the defenders proponed compensation against the L.50 bond due by John, by debts of greater value due to John by William his father; but the Lords found that the said debt due by John to his brother James Murray, as it stood in the pursuer Clerk of Glendorich's person, was not compensable by the debts due to John by William his father, because John could not have compensated it against his brother James by these debts due to him by his father; and though his granting the bond in the name of his brother James could not prejudice the creditors of William the father, whose money it truly was, yet their being reponed against the fraud could not benefit John the debtor, nor any deriving right from him.

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1740. *July 24.*

LEITH of Leithhall *against* GORDON of Law.

No. 5.

COMPENSATION by a *chirographum redditum debitori* allowed to be again reared up by witnesses, and on advising the proof sustained. *Vide* WITNESS.

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1739. *January 2.*

SIR WILLIAM MAXWELL *against* CREDITORS of Sir GODFREY M'CULLOCH.

No. 6.  
Recompensation.

SIR WILLIAM MAXWELL being debtor to Sir Godfrey M'Culloch in 1683, became afterwards creditor to him in some debts wherein he had been cautioner for Sir Godfrey, and had paid, and for which he had security in the liferent escheat by the donator's backbond in Exchequer, and there-

fore became creditor by other debts purchased, for which he had no other security than the other creditors; and in the competition the other creditors, in order to diminish his credit upon the escheat, having proponed compensation on the debts due by him to Sir Godfrey in 1683; Sir William proponed recompensation upon Sir Godfrey's debts last acquired by him, and which were not secured upon the liferent escheat. The Lord Ordinary first found that the compensation must operate betwixt those debts due by Sir William Maxwell in 1683, and such of Sir Godfrey's debts as thereafter came first into Sir William Maxwell's person; but having afterwards reported it, the Lords found that compensation being proponed against the debts, for which Sir William had security on the liferent escheat, he may recompence on any other debts in his person prior to the proponing the compensation; and upon a reclaiming bill, it appearing that Sir William had already proponed recompensation in part upon three debts secured on the escheat, which was sustained and decret extracted, they found that that decret must stand; but as to the balance remaining of the debts due by Sir William, they adhered to their former interlocutor. *Vide* 9th November, 1739, Forbes against Innes, *voce* INDEFINITE PAYMENT.—N. B. The Lords thought a debtor of a bankrupt cannot compense on debts of the bankrupt acquired after the bankruptcy, but the point not being argued, they remitted it to the Ordinary. (See DICT. No. 7. p. 2550.)

No. 6.

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1742. February 26. EARL STRATHMORE *against* EARL of ABOYNE.

No. 7.

THE heir being pursued for a debt of the defuncts, may propone compensation on a moveable debt due to the said defunct without confirming it. (See DICT. No. 33. p. 2573.)

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1742. December 7. CREDITORS of KINSTERIE *against* ROSS of Kilravock.

No. 8.

COMPENSATION being pleaded against an assignee, he may recompence by debts due to his cedent, though not assigned to him, and may compense by what debts he purchases, so as to preserve entire a debt secured by inhibition. And the cedent, who was creditor by a debt so secured, and debtor by other debts, being also cautioner for his debtor now *lapsus*, may retain the debts due by him for relief of his whole engagements as cautioner, and is not obliged to suffer these debts due by him to be applied to extinguish the