

1712. *February 20.*

MR JOHN HAY, Son to the late Parson of Peebles *against* ARCHIBALD CRAWFORD of Ardmillan.

IN the action at the instance of Mr John Hay, as having right by progress to several bonds granted by old James Crawford of Ardmillan to his creditors, against Archibald Crawford as heir to the granter; the defender proponed compensation upon the pursuer's author's intromission with moveables and other effects belonging to James Crawford the debtor, to the value of the sums pursued.

Answered for the pursuer, The defender, who is heir to Ardmillan the debtor, cannot propone compensation upon the moveables and effects aforsaid; because these belong to Ardmillan's executors to whom the intrommitter is liable; and no person can compensate a debt with a subject he hath no right to; for compensation operates only extinction *ipso jure si applicetur*: And a man cannot apply a debt he hath no right to, for compensating what he owes to the debtor, more than he can exact another man's money to pay his own debt.

THE LORDS found, That the compensation that was competent to the deceased James Crawford of Ardmillan, is competent to his heir.

Fol. Dic. v. 1. p. 161. Forbes, p. 591.

No 31.
An heir, pursued for his predecessor's debt, was allowed to compensate it with a debt owing by the creditor to the defunct, though that being a moveable debt, belonged to his executors, and not to the heir who proponed compensation.

1738. *June 30.* RAE and FERGUSON *against* CLERK of Glendorch.

IN a competition among creditors, compensation was sustained against an adjudger, upon a debt due by him to the common debtor, though it would not have been competent to the common debtor himself, who neglected to propone it in the process of constitution carried on against him by the adjudger; it being *urged* for the other creditors, That they were entitled to propone this compensation during the said process of constitution, and they could not be cut-out of their interest by the decret in which they were not made parties; though here, it was *answered* for the adjudger, That to allow creditors to propone compensation after the debtor's privilege is at an end, in whose name only they can plead, would be the same as allowing a creditor to reduce upon minority and lesion, after the lapse of the *quadriennium utile*.

Fol. Dic. v. 1. p. 161.

No 32.
In a competition, compensation was sustained against an adjudger, upon a debt due by him to the common debtor, altho' the common debtor himself could not have pleaded it, not having proponed it in the process of constitution against him.

* * Kilkerran reports the same case :

1738. *July 28.*—WILLIAM MURRAY of Hydwood, after he was bankrupt, having taken from John Murray of Townhead, his debtor, a bond for the debt, in name of James Murray his son; after William's death, Clerk of Glendorch,