

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.

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.

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-