1712. *February* 20.

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

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.

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 aforesaid; 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.

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

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.

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 decreet 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.

*** 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,

No 32. one of his creditors, confirmed the same as *in bonis* of William the father; and, upon that title, obtained decree, finding that James was under pupillarity, and *in familia* with his father at the time of granting the bond, and that the sums therein contained were *in bonis defuncti;* and therefore reducing the said bond granted by John to James Murray, and declaring the same to belong to Clerk the pursuer, as executor-creditor confirmed to William Murray the father, and decerning John Murray to make payment to the pursuer of the sums contained in the said bond.

Upon that decree, Clerk having led an adjudication against John Murray, of his lands of Townhead, and thereupon brought an action of mails and duties, and reduction of a prior adjudication, led at the instance of John Rae, and from him acquired by James Fergusson, now designed of Townhead, it was *objected* by Rae and Fergusson, the defenders, that the debt, which was the ground of the pursuer's adjudication, was extinguished by compensation, in so far as, at the time that John Murray of Townhead was prevailed upon to grant the bond to James Murray the son, for the sum he owed to William the father, the said William was owing to John a greater sum; and though it was true, that John, by granting his bond to James for the debt he owed to William, did thereby renounce the compensation, yet now, that the said bond is reduced, and the sum therein contained declared to be *in bonis* of William the defunct, the compensation must again revive; otherways this absurdity would follow, that *uno spiritu* the debt should, in consequence of that reduction, be considered as *in bonis* of the father in favour of the pursuer, and, at the same time, in prejudice of the defenders, be considered as belonging to the son.

Answered for the pursuer, 1*mo*, That the compensation not having been pleaded in the process at Glendorch's instance, it was not now competent after decree. 2*do*, That the compensation cannot revive; for, though that bond was reduced at the instance of Glendorch, yet, still, it was a subsisting bond to James against every other person than the reducer, who had affected the subject by his confirmation.

THE LORDS 'found it competent to the anterior creditor of John Murray to propone compensation, notwithstanding of the decree against the said John, to which he had not been party; but found that the debt due by John to James Murray, as it stood in Glendorch's person, was not compensable by the debt due by William Murray to John.'

Such is the nature of all reductions on the act 1621, as to be profitable only to the reducer, and even to him only where he has affected the subject; the nullity introduced by the statute, being not a simple nullity, which, particularly in such a case as the present, should void the only subsisting instrument of debt, but only a nullity to the effect of giving access to the creditor-reducer to affect the subject. *See* BANKRUPT.

Kilkerran, (BANKRUPT.) *No* 1. *p.* 47.