

no money, in their hands, of the drawer ; but, at the time of the protest for non-payment, they had received a bill, payable some short time after. The Lords seemed to hold even the first presentment sufficient to prefer the holder, and that it drew back. Indeed, in this case, there was another circumstance, that the other bill was not drawn upon Sir William Forbes and Company, but only made payable at their house. The Lords held this *per se* noways equivalent to an assignation.

There seems to be three different kinds of bills; bills for instant value,—bills to account,—bills in security.

Indorsees to the first are onerous indorsees, if value is given; and indorsees to the second are onerous indorsees if value is due; but indorsees to the last are not onerous indorsees,—they are not entitled to the privileges of onerous indorsees, nor are they liable to negotiate.

It has been often doubted, whether an indorsee value in account is an onerous indorsee, and entitled to the privileges of an onerous indorsee; *22d February 1775, Messrs Harris against Crosbie*; the Lords found that he was so.

BRIEVE OF DIVISION.

1772. *February 22.* CATHCART OF CARBISTON *against* JAMES ROCHEAD OF INVERLEITH.

THE estates of Inverleith and Darnchester having been held *pro indiviso* by four heirs-portioners and those deriving right from them; James Rothead of Inverleith, as in right of these four heirs-portioners, took out a brieve from Chancery for dividing the lands of Inverleith, directed to the sheriff of Edinburgh, within whose jurisdiction Inverleith lies, (see *Heirs-Portioners.*) Mr Cathcart of Carbiston, in right of the other fourth, not choosing that the division of Inverleith should proceed before the sheriff, gave in a bill to the Ordinary on the Bills for a warrant to the Chancery to issue brieves for dividing both Inverleith and Darnchester, the last lying in Berwickshire, directed to the macers of Session, as sheriffs in that part. The bill passed of course, no notice of the application having been given to Mr Rothead.

In consequence of this warrant, Mr Cathcart took out brieves of division

directed to the macers,—and, upon that account, he insisted that there could be no further procedure on the brieve for division of Inverleith before the sheriff. But it being answered, that the macers had no jurisdiction in the matter; that the warrant which had passed, of course *periculo petentis*, was totally incompetent; and that no sist of procedure before the sheriff had either been granted or applied for:—The sheriff, (30th August 1771,) repelled the objection, and granted warrant for summoning a jury upon the division, to meet at Inverleith.

Upon this, Mr Cathcart applied, by bill of advocation; which being reported by Lord Stonefield, on memorials:—“The Lords, (22d February 1772,) remitted the cause to the sheriff, *simpliciter*, in common form.”

It was pleaded by Mr Rothead, that, with respect to brieves of division, the uniform practice has been to direct them to the sheriff; and no instance is on record where they were directed to the macers; and that this is the case of all the pleadable brieves: in the next place, even if this had been competent in point of form, no reason of advocation in the present case could be given for advocating the procedure from before the sheriff. The procedure had been regular in every respect, and therefore the cause fell to be remitted. It was true, that the brieve only related to the lands of Inverleith, because these lands *only* lay within his jurisdiction; but nothing hindered Mr Rothead to choose to have the one estate divided, and not the other; and if Mr Cathcart choosed to divide Darnchester as well as Inverleith, he had an easy remedy, by taking out a brieve of division of that estate, directed to the sheriff of Berwick.

On a reclaiming petition and answers, the Lords adhered.

BURGH ELECTIONS.

1761.

INNERKEITHING.

ANDERSON had been duly elected a burghess of Innerkeithing, and freeman of the incorporations of Baxters. But having removed his residence to Dumfermline, *anno* 1732, and acted as freeman there, and afterwards returned to Innerkeithing, not with an honest view to reside there, but to give his vote at the election of Deacon of the Baxters; after which he returned to Dumfermline:—and being objected to, on account of non-residence, the Lords, — 1761, sustained the objection.