

1775. *August 5.* RICHMOND *against* ELLIOT.

By the late Bankrupt Statute, summary diligence by horning, &c. is authorised on all protested bills, against the accepters, indorsers, and drawers; and this whether the bill is protested for not-payment or not-acceptance. But then it is to be observed, that, in the case of the indorsers and drawer, it must always be understood that the bill is duly negotiated,—that is, protested within the days of grace, and the dishonour notified. In this particular, the Act of Parliament never was intended to make any difference; and so the Lords thought, 5th August 1775, Richmond against Elliot,—a bill of suspension reported by Lord Covington.

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1777. *July 25.* STEWART *against* BISSET.

IN a question which came into Court, *anno* 1774, and depended before Lord Auchinleck; it was objected to a bill, that the person who signed as drawer, and as indorser, was not the real drawer, but that he had received it blank from the real drawer, and had signed it as drawer, and then indorsed it. The holder of the bill insisted that this was often done, and could be of no consequence to the acceptor, as he was bound at any rate. The Lord Ordinary having called for the opinion of merchants upon it,—Forbes, Hunter, and Company, Mansfield and Company, and Messrs Cumings, declared that they knew no such practice; but that the person to whom a bill was accepted, always signed it as drawer, and no other was entitled to do so.

Much the same question occurred, Stewart against Bisset, decided 25th July 1777. Stewart, among his father's papers, found a bill accepted by Bisset's father, blank in the drawer's name: to this he adhibited his subscription as drawer, and then indorsed it. It had lain over 18 years, and seemed truly some incomplete and inexplicable transaction betwixt the two fathers. But Lord Elliock put it upon the bill not being signed or indorsed by the drawer, but his son; and therefore assoilyied: and the Lords adhered.

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1775. *March 3.* CALENDAR *against* FIDDES.

CALENDAR, as indorsee to a bill for £9, granted by Fiddes to King, gave Fiddes a charge for payment: Fiddes suspended, and *inter alia* pleaded, that the subscription of King as drawer, and also as indorser, was not his subscription, but adhibited by his wife; and, therefore, that Calendar was not a regular indorsee to a regular bill; but that, at the least, it was only a document of debt by him to King, against which lay every exception of compensation, &c. ANSWERED,—King's wife had authority from the husband to do so, and was in use to do so; and though such practice is not frequent in Scotland, yet it is common in England, as appears from Cunningham's *Treatise on Bills*, and a

case in *Modern Reports*, Vol. XII, p. 564. ANSWERED,—Such practice is even not common in England; it is indeed so as to indorsations, but not as to signing as drawer, which is infinitely more dangerous: and as to Scotland, an appeal was made to merchants, that no such practice is known, either as to drawer or indorser, (3d March 1775.) The Lords found the letters orderly proceeded, and gave expenses. This last upon circumstances.

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1776. *November 26.* GLASS *against* KELLIE, &c.

IN a cause, Glass against Kellie, &c. it was argued, That an indorsee in security is not entitled to recourse against the indorser. But this was held to be bad law: an indorsee in security, is not liable to negotiate; and, at the same time, is entitled to recourse, unless the debt has perished through his fault.

1776. *November 26.* GLASS *against* KELLIE, &c.

IN the same action, the Lords adhered to Lord Covington's interlocutor, finding, that an indorsation of a bill by a wife *vestita viro*, was void and null.

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1775. *December 20.* VEZIAM *against* CORBEANY.

How far bills are to be compared to a bag of money;—and, like money, subject to no *vitium reale* though stolen.

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1777. *January 16.* ELLIOT *against* MACKAY.

By the decision, *Sougal against Ker*, 111, *Fac. Coll.* No. 79; bills, after the lapse of twenty months, lose their extraordinary privileges, and are subject to compensation, arrestment, &c. In a case, *Fulton against Dunlop*, decided by Lord Auchinleck, winter 1775, his Lordship reduced this period to six months after the term of payment; and the interlocutor was acquiesced in. In another case, *Elliot against Mackay*, where compensation was pleaded on a debt of the drawer, against an onerous indorsee, into whose possession the bill came, before the term of payment, but who had taken no step, nor raised action upon it for 21 months after the term of payment; Lord Pitfour, 25th February 1775, pronounced an interlocutor to the same purpose, fixing the extraordinary privileges at six months after the term of payment. And Lord Auchinleck, to whom the cause was remitted, having taken it to report, the Lords found, That compensation was proponable against the bill in question; and remitted to the Ordinary to proceed accordingly. But this day, (16th January 1777,) the Lords found, That compensation was not proponable against the bill in