creditor in the L.627. On the other ground, stated by Lord Covington, the presumption in law is, that the assignation was given in payment.

PRESIDENT. There is real evidence of the trust arising from the writings as well as from parole evidence.

GARDENSTON. Slight evidence by writing, joined to strong parole evidence, will remove this case from the Act 1696.

On the 8th July 1777, The Lords found that there is sufficient legal evidence, from the writings produced, the parole evidence, and all the circumstances of this case, that the assignment by Blackbarony to his sister, Mrs Mary Stewart, was granted as a trust in her person, and for his behoof, that the debt might be kept up against the entailed estate; adhering to Lord Gardenston's interlocutor.

Act. Ilay Campbell. *Alt.* A. Crosbie.

1777. *July* 9. WILLIAM JOHNSTON and OTHERS *against* GEORGE WARDEN.

HYPOTHEC.

Extent of preference for repairs under a jedge and warrant.

[*Supp. V.* 479.]

HAILES. The controversy here appears to be occasioned by two different things being vulgarly called by the same name of jedge and warrant. No man can touch his own house, in the way either of demolition or reparation, without the authority of the Dean of Guild, and this authority is called jedge and warrant. Any thing done in consequence of this authority is legally done; but the persons employed by the proprietor either to demolish or repair, have no hypothec on the subject,—they are just in the state of common tradesmen. There is another thing called a jedge and warrant: When the Dean of Guild, as an officer of police, empowers certain persons to execute work about a house, they have a hypothec, or preferable right, for payment of their labour, and indeed they would not work without such privilege, for the Dean of Guild, acting as a judge, could not be personally bound in payment.

BRAXFIELD. Attempts have been made of late to bring back upon us a part of the Roman law, which is not consistent with the commercial interests of this country. Here there is a jedge and warrant granted to the proprietor: it is absurd to say that the proprietor can have a real lien. Although a person, other than the proprietor, should get a real lien, by a jedge and warrant, that lien will not go to the tradesman whom he employs.

GARDENSTON. The jedge and warrant is nothing more than an order of the Dean of Guild to the proprietor for building consistently with the police of the burgh. Lord Hailes has properly stated the distinction.

KAIMES. This point has not even an appearance.

JUSTICE-CLERK. It is my wonder that lawyers should have been so ingenious as to darken this point. The case of *Donaldson*, when rightly understood, is against the tradesmen.

On the 9th July 1777, The Lords found that the tradesmen, employed by law, have no preference in virtue of the jedge and warrant.

Act. Ch. Hay, R. Sinclair. *Alt.* R. Blair.

Reporter, Covington.

1777. *January* 16, and *July* 25. DAVID ELLIOT *against* HUGH M'KAY.

BILL OF EXCHANGE.

Privileges, when lost. Can Compensation be pleaded against an Onerous Indorsee for a Debt of the Drawer eighteen months after the Bill has become due, when no Diligence has been used upon it?

[*Fac. Coll. VII.* 459; *Dict., App. I., Bill of Exchange, No. II.*]

MONBODDO. The decision 1762, *Scougal* against *Ker*, cannot be got over.

KAIMES. I cannot suppose that a bill payable in six months is a bill, properly so called: it is no other than a common security. [This was a crude opinion.]

JUSTICE-CLERK. This bill was sent to Glasgow, in order that it might be discounted by any person who chose to pay value for it; and value was accordingly paid. Had the indorsee proceeded to diligence, the defence of compensation would not have been good. How can it alter the case, that the indorsee was so indulgent as to give the debtor some further time? When a bill lies over for any considerable time, the presumption is that the purchaser takes it as a security, liable to all objections, and not as a bag of money.

PRESIDENT. When a bill remains in the hands of the drawer for a considerable time, it loses its privileges. That the bill has been indorsed makes no difference; for the acceptor knew nothing of the indorsee, and he may have acted accordingly, by paying money to the credit of the drawer.

GARDENSTON. Compensation is proponable, and there is no danger from such doctrine. Why should the indorsee be in a better condition than the original drawer? For that there is neither reason nor expediency. The bill continues a good document of debt, but it has no extraordinary privileges.

BRAXFIELD. Compensation is admissible after the lapse of six months, for then the extraordinary privileges of bills are gone. It makes no difference that the bill was indorsed before the term of payment. Bills are bags of money, while used for their proper purpose. If the fact of indorsation should alter the case, no plea that a bill was compensated could ever take place as long as the bill continued actionable.