

several pieces of service for him; *L. 19. § 5. ff. De donat.*; and Fountainhall, v. 2. p. 499. 4th June 1709, *Burden contra Oliphant, voce DEATH-BED.*

No 45.

The principal defence insisted upon for Farquhar against the reduction was, That though what is above pleaded for Shaw were well founded, these exceptions are not relevant against him, as being an onerous indorsee: That no objection to a bill can be pleaded against an onerous indorsee, but what appears *ex facie* of the bill; unless it shall be proved, that he was in the knowledge of that objection; which cannot be pretended in the present case. Thus an objection, that a bill of L. 40 was granted for a game-debt, was repelled when pleaded against an onerous indorsee, 26th January 1740, *Nielson contra Bruce, voce PACTUM ILLICITUM.* It may perhaps be true, that the exceptions of falsehood; or *vis et metus*, are relevant against an onerous indorsee; because, in such cases, there is no bill granted; but, in the present case, the bill was voluntarily and legally constituted, and intended by the drawer to be effectual.

*Answered for Shaw:* That the bill in question was null and void for the reasons above pleaded; and this must affect the onerous indorsees, as well as the exception of falsehood, or *vis et metus*. That whatever might be the law with regard to a bill granted in commerce among merchants, the same privilege cannot be allowed to a bill intended only as a security. The law has said, that a legacy, or *donatio mortis causa* cannot be constituted by a bill, bearing to be granted for value; and therefore, the bill in question labours under as clear a nullity, as if it had been forged or extorted by force.

'THE LORDS found the objections proponed against the bill not competent against an onerous indorsee; and therefore assilized from the reduction, and found expences due.'

A.R. Wight.

Alt. Will. Wallace junior,

Clerk, Pringle.

Fac. Col. No 65. p. 149.

1777. July 25.

ROBERTSON and ROSS against BISSETS.

No 46.

THE LORDS refused action on a bill, the drawer of which had died without subscribing it; and the subscription had been adhibited by his heir and representative. See This case *voce BLANK WRIT.*

*Fol. Dic. v. 3. p. 76.*

1785. February 8.

ANNE DRUMMOND against CREDITORS of JAMES DRUMMOND.

No 47.

JAMES DRUMMOND subscribed as the acceptor of a bill drawn in these terms: 'Against Martinmas next, pay to Anne Drummond, or order, the sum of 1035 merks, for value.' But there was no subscription of the drawer.

A bill not subscribed by the drawer, sustained as a document of debt.