

his subscription, and offering no objection against the bill, except the long time it had lain over.

No 185.

*Fol. Dic. v. 1. p. 102.*

See The particulars, *voce* WRIT.

1729. *January.*

DAVID HODGE, Copper-smith in Edinburgh, *against* JOHN SPIERS, Merchant there.

SPIERS, upon 19th June 1713, drew a bill upon Daniel Carmichael for L. 6 Sterling, payable on 1st December following. Without having done any diligence on the bill, Spiers indorsed it after several years. A date of March 1719 was affixed to the indorsation; and it was said, that Spiers had intrusted it blank indorsed to one Paterfon, in order to receive payment; but that Paterfon, in defraud of the trust reposed in him, had transferred it to Hodge. Hodge, after discussing Carmichael the acceptor, brought an action for recourse against Spiers the drawer.

No 186.

An indorsation of a bill which had lain over several years, found to import no more than the warrandice of an assignation.

Spiers *pleaded* in defence, That the bill having lain over for so many years had no privilege; and that Hodge, the apparent indorsee, was in no better situation than Paterfon, to whom it had been intrusted, and who had improperly given it to him.

THE LORD ORDINARY pronounced this interlocutor, 'Sustains the defence, and finds the bill pursued on has lost the privilege of a bill of exchange; and that the indorsation imports only the warrandice of an assignation; and therefore recourse is not competent thereupon; and affoizies, and decerns.'

To this interlocutor the Court adhered, upon advising a petition and answers. See No 182. p. 1623.

Lord Ordinary, *Rayston.*

For Hodge, *Jas Colvill.*

For Spiers, *Pat. Grant.*

*Fol. Dic. v. 1. p. 102. Session Papers in Advocates' Library.*

1734. *July 5.* RELICT of GEORGE SWAN *against* PROVOST JOHN CAMPBELL.

No 187.

IN a process of recourse at the instance of an executor, who, after the bill had lain over 23 years in the defunct's custody, protested it for non-acceptance, the drawer considered he had nothing to say for want of due negotiation, because the drawee was solvent; but he *pleaded*, That the bill was null upon the act 1681, as wanting writer's name and witnesses. He allowed that bills are excepted out of this act by custom, for the benefit of commerce, and by analogy to the laws of trading nations; but then the exception ought not to be absolute; it ought to be no broader than the practice of other nations will support, from

A drawer was not, even after 23 years, found entitled to plead that his draft wanted the solemnities of a probative writ.