

1736. *February 24.* WILSON & FRASER *against* NISBET of Craigentenny.

A BILL was alleged to have been elicited, without any onerous cause, by the drawer, after having intoxicated the acceptor with liquor, so that he was insensible, and incapable of knowing what he was doing. This defence was not sustained against an onerous indorsee; although it was pleaded, that force and fear, and such like real exceptions, are sustained against onerous indorsees.—The answer was, That drunkenness is but a temporary incapacity, which ought not to be regarded, especially as it was the acceptor's own fault. See The particulars, *voce* FRAUD.

No 96.  
No good defence against an onerous indorsee, that the bill was elicited without value, from the acceptor when intoxicated.

*Fol. Dic. v. 1. p. 98.*

1740. *January 25.* NEILSON *against* BRUCE.

AN onerous indorsee was found not to be affected by the circumstance of the bill having been granted for a game debt. The same was found, 18th February 1741, Clerk against Stewart.

No 97.

*Fol. Dic. v. 1. p. 98. & v. 3. p. 81. Kilkerran, p. 70.*

\* \* See The particulars of these cases, *voce* PACTUM ILLICITUM. By later decisions, it has been settled, that a bill for a game debt, contains such a *vitium reale*, as to render it ineffectual, even to an onerous indorsee.

1745. *January 5.* WILLIAM HERRIES of Haldykes, Supplicant.

WILLIAM GRAHAM drew a bill on William Irvine of Whitechapel, drover, ordering him to pay the petitioner the sum of L. 120 Sterling. This being duly accepted, past, by indorsation, through different hands, the last of whom protested it for not payment.

John Tod paid it for the honour of one of the indorsers, who afterwards paid him, and was himself paid by the petitioner, upon his receipt on the protest.

William Herries, the petitioner, also drew a bill for L. 130 Sterling, payable to himself, on Thomas Bell, who accepted thereof; and this having past through the hands of several indorsees, was protested for not payment; and thereupon was paid by the petitioner to one of the intermediate indorsers, upon a receipt on the protest, the subsequent indorsations being scored. As the protests were in the name of the last indorsees, Mr Herries petitioned the Court for warrant for registration in his own name, according to their practice in such cases, particularly the case of Stark of Glasgow against Barclay of Hamburgh; and one about a year ago, Straton against Scot of Melby, see LEGAL DILIGENCE.

THE LORDS granted warrant for registration for summary diligence against the acceptors, at the instance of the petitioner.

No 98.  
Although the protest be in name of an indorser, the drawer who has paid, may proceed in summary diligence in his own name.

*D. Falconer, v. 1. p. 39.*