No. 4.

To this the defender answered, That as he held sundry bills accepted by the drawer for money advanced or furnishings made, which would more than extinguish the bill in question, therefore as no diligence had been used upon it till more than six months after the term of payment, and as the statutory privilege of summary diligence was limited by the statute 1681 to six months after the term of payment, as Elliot then can only now sue by an ordinary action, the bill must have lost its peculiar privileges, and must therefore be subject to every ordinary exception competent against the original creditor.

The extraordinary privileges of bills, from their nature, must be limited after the term of payment; because it is only till that term that the bill is considered to be current like a bag of money; as after that term is elapsed without payment being made, it is reduced to the footing of an ordinary security for debt. As the act 1681 expressly limited the benefit of summary diligence to six months after the term of payment, so it did thereby in effect declare, that after that time a bill should come into the state of any common document of debt. The Court did accordingly solemnly decide, that this privilege expired in six months, in the case of Scougal against Kerr, February 1762, No. 199. p. 1641; where a bill which had lain over for twenty months after the term of payment without any diligence being done upon it, was found subject to compensation although in the hands of an onerous indorsee. Thus on the faith of this bill remaining with the drawer, the defender had been induced to contract with him, and to receive his bills to a greater amount, never doubting that when a settlement took place, these bills would have compensated. But if he was now obliged to pay this bill, he must sustain a total loss on the other bills in his hands, as the drawer's funds were totally bankrupt.

The Court, considering that if their former interlocutor was adhered to, it would be destructive of that branch of commerce which must be carried on by bills, and that if in the case of Scougal their predecessors had had the statute 1772, limiting the subsistence of bills, they would not have pronounced that decision, altered their interlocutor, and found that compensation was not proponeable against the bill in question.

Lord Reporter, *Auchinleck*. Act. *Ilay Campbell, Claud Boswell*. Alt. *David Rae, James Boswell*. *D. C.*

*** No. 205. p. 1648.

1777. *July* 25.

CHARLES ROBERTSON of Balnagaird, and JAMES ROSS, Writer in Perth, *against* DR. CHARLES BISSET.

No. 5.
Whether a bill be actionable when not signed by the drawer, but

THE defences pleaded against the payment of a bill which was not signed by the drawer, but by his son and representative after his decease, were, that the person who subscribed as drawer was not actually the drawer, and that although the subscription of the accepter was confessed, yet, the bill being a

No. 5. to which the drawer's son and representative has adhibited his subscription.

false and fabricated instrument could not be made the foundation of any action.

To this it was answered, that in the law of Scotland, there are evidently two species of bills perfectly distinct from each other. An inland bill, before the late statute 1772, was considered as a permanent security, which did not prescribe within 40 years, and accordingly interest then was and still is current upon them as such. Such a bill therefore is principally intended as a document of debt and permanent security; which is perfectly incompatible with the nature of a bill of exchange used by merchants, which is regulated by the laws of commerce, and which does not bear interest till dishonoured.—In the law of Scotland, it is perfectly sufficient if the drawer adhibits his name any time before demanding payment. The natural temper of man always delays what he can so easily do at any time. Matters continue in this situation till the drawer's death transmits to his representative a document of debt, unquestionably good when he was alive, but in a moment rendered ineffectual by his death. Had the subscription of the drawer been absolutely necessary, the law would have required it to have been adhibited at the same time with that of the accepter; therefore it is contrary to justice to maintain that the accidental death of the drawer should liberate the accepter from his obligation. A right which was competent to the defunct when alive, must also be transmitted to his heir and representative, *nam hæres est eadem persona cum defuncto.* It was determined by the Court, 9th December 1775, in the case of Cameron, (not reported,) that action lay upon an inland bill against the accepters, though this bill wanted the pursuer's subscription.

The Lord Ordinary pronounced the following interlocutor: "In respect that "it is acknowledged by the pursuer, that the subscription to the indorsation in "his favour, is not the subscription of the drawer of the bill, Finds that no "action lies at his instance for payment of the contents of said bill, assoilzies "the defender, and decerns." To this interlocutor, upon advising a reclaiming petition and answers,

The Court adhered.

Lord Ordinary, *Elliock.* Act. *A. Bruce.* Alt. *W. Nairne.*

D. C.

*** See No. 18. p. 1676.

1798. *November* 21.

JAMES ROBERTSON, *against* JAMES OGILVIE, Trustee for the Creditors of JAMES BURNSIDE.

No. 6. An indorsation to a bill within sixty

THE estate of James Burnside was sequestrated on the 27th April 1793; and James Ogilvie was appointed trustee for his creditors.