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 intorsee, 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 assoilzied from the reduction, and found expences due.'

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

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.

No 47. It was *objected* by the other creditors of James Drummond, That a bill not ſubſcribed by the drawer, though accepted, could not be ſuſtained as a ground of debt.

But as the creditor's name was inſerted in the body of the bill in queſtion, and thus there occurred all the eſſential requiſites of a promiſſory note,

The Court repelled the objection.

Alt. *Drummond.* Act. *Dickſon.* Clerk, *Menzies.*

Stewart. *Fol. Dic. v.* 3. *p.* 76. *Fac. Col.* (*Appendix.*) *No* 7. *p.* 11.

1786. *November* 22.

ALEXANDER HARE *againſt* JEAN GEDDES, and Others.

No 48. Found as above. IN this caſe, being a competition of creditors, the objection was made to an accepted bill, That it was not ſubſcribed by the drawer; which objection the Court conſidered to be obviated by the circumſtance of the creditor's name being indorſed on the bill, over which ſtood receipts for partial payments. The name of the drawer was likewiſe inſerted *in gremio* of the bill.

The Court therefore repelled the objection.

Act. *Honyman.* Alt. *Dalzell.* Clerk, *Home.*

Stewart. *Fol. Dic. v.* 3. *p.* 76. *Fac. Col.* (*Appendix.*) *No* 8. *p.* 12.

See Fair againſt Cranſton, *voce* BLANK WRIT.

See BLANK WRIT.

SECT. VI.

Requiſites of a Bill.

No 49. A bill is indorſable, though not bearing *To Order.*

1726. *January.* Competition CHARLES CRICHTON with JAMES GIBSON.

IT was diſputed betwixt theſe parties, if a bill not bearing *to order*, was notwithſtanding indorſable? And it was *pleaded* for the indorſee, There can be no more neceſſity to make a bill payable *to order*, than to make a bond payable to aſſignees; eſpecially in this caſe, where the bill is betwixt two. In both caſes, an effectual obligation is contracted of loan; they are both *nomina debitorum*, which are always aſſignable by our law. Perhaps there may be a difference, where a bill is taken payable to a third party: For there it may be argued, that the poſſeſſor of the bill is more properly a mandatary than creditor; and, therefore, if the drawer of the bill that remits the money, intends that his correſpondent ſhall have the diſpoſal of the bill, he adjects, *or order:* And it is thought by ſome foreign writers, that otherwiſe the correſpondent cannot indorſe the bill. This, it is believed, gave riſe to the words, *or order;* which thereupon became common in all bills; but can never be neceſſary, where the procurer of the bill is the lender of the money, and the creditor himſelf.

It was *answered*, That when bills debord from the ſettled ſtyle and tenor, they have not the extraordinary privileges, which are given only to writs of a certain