No. 2. 1745, Feb. 21. BONTEIN *against* MILDOVAN.

THE Lords found that by our law the *beneficium competentiæ* is competent to parents against their children; but as this is but a personal privilege, and not effectual against creditors, we remitted to the Ordinary to hear on the effect of that *beneficium*. *Vide Con.* Harcarse D. 928.

No. 3. 1749, Nov. 30. HOGG *against* HOGG.

WE all agreed that John Hogg had no *beneficium competentiæ* against Mrs Hogg his daughter-in-law, but the majority thought that he had against his grandchildren; but the difficulty was in the execution. In the houses in Edinburgh he had an infeftment of annualrent for L.90 preferable to them. Only we had found them preferable, though their claim was only on a personal obligement by their father, whereon they had adjudged, in respect of his misrepresentations in the marriage-contract, but reserving his *beneficium competentiæ*, and therefore we thought we could sustain his infeftment to that extent. But then as to the L.1000 sterling in Saughton's hands, the residue of the price of Cammo, he had no interest there, and therefore the *beneficium competentiæ* did not apply there. *2dly*, We thought that in modifying that *competentia*, we ought to have regard to his blind daughter, who was really secured on the L.1000 for the interest of 3000 merks during her life, and that not only during Mr Hogg's life but also during her's, because it was a duty of nature on him to provide for such a child's aliment even after his death. *3tio*, We thought that in the *beneficium competentiæ* we ought to consider the necessity of the parent more than the necessity of the child, whereas in a process of aliment against a child, the defender's own necessity must be first provided for; and *2dly*, That *beneficium* is competent though there were other nearer bound *jure naturæ* to aliment, as in this case John Hogg's two sons, and on the whole we modified to John Hogg for himself L.30 sterling, and for the use of his daughter L.100 Scots, and after his death the L.100 to be paid to the daughter herself; and left it to the Ordinary to hear them as to the execution. 30th November we adhered, so as the *beneficium competentiæ* should not affect the widow's liferent, though they thought it would affect the fee. I was in the Outer-House. Reversed in Parliament. 1 (27) March 1750.

BILL OF EXCHANGE.

No. 3. 1734, Feb. 13. NIELSON *against* RUSSELL.

THE Lords found the nullity relevant, and proveable *prout de jure*. *2dly*, Sustained the reason of reduction on both acts 1621 and 1696, to the extent of L.159, the two debts in payment whereof the bill to him was indorsed. *3dly*, Repelled the reason on the said acts *quoad* the *reliquum* paid by Mr Russell by bills drawn payable to Mr Gordon.

The Lords adhered to that part of the interlocutor finding it relevant to prefer the arrester, that the bill was not signed by the drawer at the time of this arrestment.—N. B. They did not consider this bill as a writ blank in the creditor's name, but as an imperfect writ, till the drawer signed, and therefore the debt arrestable. Several of the Lords thought it not competent against onerous indorsees.—25th June.

After long reasoning, found it proveable by witnesses. Isla thought the first interlocutor wrong, but since it was so found, thought it proveable by witnesses.—3d July.

No. 4. 1734, July 5. HUNTINGTON *against* PROVOST CAMPBELL.

THE Lords adhered that recourse is competent though not negotiate, because the bill did not bear value received; but appointed a hearing in presence the first November upon the prescription.

No. 5. 1735, Feb. 5. DUN *against* ADAM.

THE Lords adhered to the interlocutor sustaining the bill, notwithstanding it bore annualrent three months before the date.

No. 6. 1735, Feb. 7. INNES *against* GORDON.

THE Lords found there was not such *mora* upon the part of the creditor as to debar him from recourse, and therefore repelled the reasons of suspension. The Lords thought the distinction good between a bill payable at days sight, and at a certain day, for if this bill had been payable the 26th June, (at which day it would have fallen due if it had been sent by the course of the post, and so had been accepted on the 12th) they thought the not demanding payment before the 3d July, when the acceptors broke, would have excluded recourse.

No. 7. 1735, July 22. VAN CHARANT, &c. *against* BALDWIN.

THE Lords adhered to the interlocutor of 25th June, sustaining Van Charant's grounds of preference to Baldwin's the indorser.

No. 8. 1735, Nov. 20. ANDERSON *against* WOOD.

WOOD having given a letter of credit desiring to furnish Brown with coals upon his bill on Petrie, and promising to see the bill honoured, the bill was payable at 40 days date at a house in Edinburgh. The bill was not protested till the term of payment, when it was protested for non-acceptance and not payment; which the Lords found sufficient, the bill being payable not at days sight but at a certain day. The Lords also found that notification to the giver of the letter of credit of the dishonour of the bill is necessary in the same manner as to the drawer of a bill; but the creditor in England having deponed, that he sent such a notification by letter and showing a notandum in his copy-book of letters containing that notandum, but no full copy, the Lords found the proof sufficient, and the defender liable.