negligence has been so great as to merit the forfeiture of recourse. So it was determined in the case of Young against Forbes, 16th June 1749, No. 147. p. 1580. which decision is strongly supported by what Mr. Erskine observes, B. 3. T. 2. § 25. and there is no lawyer, ancient or modern, who has maintained a contrary opinion. No. 3.

With regard to the second suspension, at the instance of James and John Coopers, and John Arthur, the Court found no difficulty in conjoining it with the former, as it appeared pretty evident, that M'Lintock was no onerous indorsee, but only acted as trustee for Clark's behoof: They therefore altered the Ordinary's interlocutor, and pronounced the following judgment, (Feb. 27, 1777) "Con- "join the two processes, find recourse due upon Wann and Watson's bill indors- "ed by William Clark to John Cooper; find the letters at the instance of John "Cooper against William Clark orderly proceeded; sustain the said claim of "recourse, in compensation of the bill granted by the said James and John "Coopers and John Arthur to William Clark, indorsed by him to Robert "M'Lintock, and decern; Find William Clark and Robert M'Lintock, con- "jointly and severally, liable in expenses, and allow an account to be given in."

Lord Ordinary, *Alva.* For Petitioners, *C. Hay.* Alt. *James Grant.*

D. C.

*** See No. 164. p. 1604.

1777. *July* 16.

DAVID ELLIOT, Merchant in Glasgow, *against* HUGH M'KAY, in Bowmore in the Islay of Vilia.

No. 4.

Privileges when lost? Can compensation be pleaded against an onerous indorsee for a debt of the drawer, eighteen months after the bill has become due, when no diligence has been used upon it?

MACKAY, on the 27th day of January 1772, had accepted a bill, for £24. 2*s.* 10*d.* Sterling, drawn upon him by Archibald Grahame, and payable to the drawer or order at the shop of William Grahame, coppersmith in Glasgow, against Whitsunday then next. This bill was afterward indorsed by the said Archibald to the said William Grahame, who again indorsed it to Mr. Elliot the pursuer.

This bill was never protested, nor any demand made for payment sooner than December 1773, nearly two years after its date, and 18 months after the term of payment, when an action was brought at the instance of Mr. Elliot the indorsee, against the accepter, who pleaded compensation against the drawer of bill as effectual against the indorsee.

The process came before the Lord Pitfour Ordinary, who pronounced the following interlocutor: "Finds that as the term of payment of the bill libelled on "was at Whitsundy 1772, consequently the privileges thereof expired upon the "15th November said year, before any action was brought upon it; therefore it is "competent to the defender to plead compensation against it; and finds that the "grounds of compensation produced exceed the sum in the bill libelled on,

No. 4. "therefore alters the former interlocutor, assoilzies the defender, and de-
"cerns."

Mr. Elliot represented against this interlocutor, but on account of Lord Pitfour's indisposition, the cause was remitted to Lord Auchinleck, who made avizandum with the case to the whole Lords. The Court, upon advising informations, found "That compensation was proponeable against the bill in ques-
"tion."

Mr. Elliot gave in a reclaiming petition against this interlocutor, stating that it has been universally understood among merchants in all countries, that the person who puts his name to a bill as accepter, must lay his account with paying it to the holder, as long as the bill itself remains in force; and although the holder should not do exact diligence by protesting, &c. this indeed may hurt his recourse against the drawer and indorsees, but can never liberate the accepter from his obligation. The very end and design of bills being to increase circulation by passing as ready money as long as they are current, it is the very nature and essence of these writings that they pass from hand to hand free of all exceptions and qualities, which do not appear on the face of the bill. There cannot be a doubt therefore, that in England, and every other country, the accepter of a bill can by no circumstances of irregularity or indulgence on the part of the holder, be relieved from payment, so long as the bill is unprescribed. It is usual also for bankers in Scotland to grant promissory notes for money deposited with them, payable one day after date; and if the money lies for six months, interest is allowed at the rate of 4 *per cent.* but if called up sooner only 3 *per cent.* is allowed. These notes therefore in general lie more than six months after the term of payment. But no banker on that account ever thought of pleading compensation against these notes, upon the debts due to him, by any of the indorsers. Such a plea would at once put an end to their business. And by the law of no country of Europe is a debt owing by the indorser or drawer of a bill proponeable as a ground of compensation against the onerous indorsee, as long as it continues to be a bill. The statute 1681, C. 20. does in no manner apply to this case. It only grants a statutory privilege superadded by the laws of this country, to those which bills enjoy from their own nature, and from the law of nations.

It is true that in this country, before the act 1772, there was no statutory limitation of bills other than the long prescription of forty years, and therefore the Court had with great propriety denied the extraordinary privileges of bills after they had laid over for a considerable time; but this was only an equitable, though perhaps arbitrary expedient, for supplying the defects of the law. The late statute, however, which limits the endurance of bills to six years as in England, entirely supersedes any such expedient; and it would be highly improper to make a distinction between the practice of Scotland and England in so important an article of commerce.

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