

No 37.

of such debt, which are all indorsements *ex figura* in payment, but, from the nature of the transaction, are only indorsements or remittances in security: If the bill is not paid, the indorsee has his remedy against the drawer, indorser, and all preceding indorsees.

There is another ground upon which this matter falls to be decided in favour of the chargers, viz. that the suspender having accepted the two bills of L. 150 each, for the professed purpose of supporting Sherriff by his raising money upon them, and thereby agreeing that his acceptances should go out into the world, cannot be admitted to plead compensation upon a bill taken from Sherriff, of the same date, as the consideration for those other bills, against the chargers, who, if they did not acquire right to the suspender's bills as onerous indorsees, did certainly acquire right to them from a most onerous cause; and, consequently, ought not to have the right acquired by them defeated by a counter bill, which the suspender's known character will not allow them to suppose or believe was intended for any other purpose, than merely operating a relief from Sheriff. But the law disapproves of such transactions, as they may be a means of ensnaring the lieges; and so the Court has in different cases refused to allow a discharge to operate in extinction of a bond, or other ground of debt, against an assignee to the debt, when the discharge bore the same date with the document of debt conveyed.

' THE LORDS repel the defence of compensation.'

Act. L. *Advocate Montgomery.*

Alt. *Wight.*

Clerk, *Ross.*

Fol. Dic. v. 3. p. 146. Fac. Col. No 162. p. 44.

1781. December 11.

CAMPBELL *against* CAMPBELL.

No 38.

A trustee found not entitled to retain money belonging to his constituent, in payment of a debt due to himself, having received the money *qua* trustee.

ASHNISH and Silvercraigs, trustees for Campbell of Danna, sold the estate of the latter, which was burdened with certain annuities; and, Silvercraigs being himself a creditor to Danna, prevailed on the purchaser to pay to him and Ashnish that part of the price which he might have retained as the stock corresponding to the annuities, they granting him a bond, obliging themselves to indemnify him from these annuities. On the death of one of the annuitants, a creditor of Danna having arrested in the hands of the trustees, a competition took place in a multiplepointing betwixt this creditor and Silvercraigs, who insisted, that he was entitled to retain the stock of the annuity, that had fallen, for payment of the debt due to himself.

THE LORDS found, that the money was in Silvercraigs' hands merely in the character of trustee to Danna, and that he had no right of retention therein.
See APPENDIX.

Fol. Dic. v. 3. p. 145.