No. 42. 1749, Jan. (June) 29. FORBES *against* WILLIAM YOUNG.

CAMPBELL, in Philadelphia, 20th June 1747, drew a bill for L.30 on ———, Treasurer to the Society for Propogating Christian Knowledge, payable to A. Forbes, merchant there 30 days after date, who indorsed it to William Young in Aberdeen for value, but it arrived at Aberdeen on 15th August, 21 days after it was due; and 17th August he indorsed it for value to George Forbes, who granted Young his own bill for L.30. 15s. payable 12th December. Forbes indorsed Campbell's bill to his correspondent at Newcastle, who sent it to his correspondent at London, who did not receive it till 13th November; and when he demanded payment, was answered they had no effects of the drawers; and sent it back to Aberdeen, without any protest, to George Forbes, who returned it to London, where it was protested no earlier than 7th January 1748. Young charged Forbes on his bill, who suspended, for that Campbell's bill was not honoured. Answered, Not duly negotiated. Replied, No necessity for negotiating where the term of payment is past before the bill arrives, or is indorsed. And I, on the authority of Molloy, lib. 2. lit. 10. § 27. *in fine*, found Campbell's bill not duly negotiated, and that no recourse lay for it, and therefore repelled the reasons of suspension. But on a reclaiming bill, the Lords remitted to ——— Coutts and Arbuthnot here, and Ouchterlony and ——— in London, to report their opinion, which was this day reported to us, that there lay recourse on Campbell's bill, though there was quoted to us from the Bar not only Molloy, but the authority of Jaffrays of bills of exchange, Chap. 1. in effect in point against it, and a proof was offered that such was the custom. However, we found that recourse lay, and sustained the reasons of suspension. I did not vote, because of the opinion of these merchants, and yet as I was not convinced of it without further authority or proof, I could not be for altering.—29th June Adhered, and refused a reclaiming bill. 16th June 1749.

No. 43, 1749, Feb. 1. THOMSON *against* COLVILL.

A BILL was accepted by Colvill to Spence of L.51. 6s. July 1742, payable in six months, but was not protested. 20th August 1744, Spence accepted to Thomson for L.47, and indorsed to him this bill in security, under back declaration that it was in security, and he not obliged to do diligence; and in fact none was done till 1746, when Spence was bankrupt. Thomson sued Colvill, who in defence proponed compensation and retention for relief of debts. On Justice-Clerk's report, we sustained the defence.

No. 44. 1749, June 28. JAMIESON *against* GILLESPIE.

WILLIAM SCOTT, drover, 12th February 1745, drew on Swan, also a drover, for L.80 sterling, payable to Thomas Gillespie, or order, 18th May, at the house of William Highmore, merchant in London, for value received of Gillespie, and was indorsed to John Gillespie, and by him to Jamieson, and by him to Claud Johnston, who, 21st May, and no sooner, protested for non-acceptance and non-payment, and re-indorsed it to Jamieson; who brought a process against Gillespie for recourse. Kilkerran sustained the defence, not duly negotiated, because not protested for non-acceptance till the

last day of grace, whereas there are no days of grace for acceptance agreeable to Molloy, Forbes, and our decision 6th and 29th July 1743, Ramsay against William Hogg. And Jamieson having reclaimed, we remitted to two merchants here, and two or three at London, to report their opinion, and they reported it for sustaining the recourse; but one of them, Ouchterlony, laid his upon a specialty, that the person drawn on was a drover; and on that report we altered the interlocutor, and repelled the objection. I confess I began to have no great opinion of these references to merchants.

### No. 45. 1749, Dec. 13. HOGG *against* MURRAY and YATES.

FIND that in the circumstances of this case, Mr Hogg has no action against Murray or Yates, the acceptors of these bills; and the President and Easdale thought they were but a name, and accepted *dicis causa*, as in the case Ouchterlony and Hunter of Polmood; but we did not all agree in that.

### No. 46. 1750, Jan. 12. ALISON *against* AGNES SETON.

PROVOST WILLIAMSON of Kirkaldy had a fish debenture 1719, not quite completed in all the forms, for L.262, whereof, and other such debentures, payment was stopped on account of suspected fraud in the sale. He in 1723 gave it to Harry Crawford in Crail, indorsed blank. It was by him given to Blair in 1737 in security of debt, who filled up his own name in the indorsation, and afterwards indorsed it to Alison, also as security of a debt that was afterwards paid; so that it came to be a trust in his person, who recovered payment; but the Exchequer retained a salt bond of Williamson's. Alison sued Williamson in recourse for the sum retained on the salt bond, who pleaded compensation on a balance of an account due by Harry Crawford, though his name did not appear on the debenture; but Alison owned that he had it in trust for Blair, who owned that he got it with the blank indorsation from Harry Crawford. Kilkerran sustained the compensation; and 7th June last we adhered; and this day we again adhered; for we thought that indorsations of debentures were only to be considered as conveyances of that debt authorized by law, not as indorsations of bills of exchange, and that if payment was refused by the Government, yet there would be no recourse, except as in this case it was evicted or retained for a debt of the indorser's, in which case, as an onerous assignee would have recourse against his cedent, so would an onerous indorsee, but not with the privileges of an indorsee of a bill of exchange, but as a common assignee, and therefore compensable with the debt of a prior indorsee. *2dly*, That in the circumstances of this case, there was no presumption that the indorsation was onerous, and therefore no recourse.

### No. 47. 1750, July 4. A *against* B.

A BILL being payable to the person named in the bill, as drawer, but not signed by him, though duly signed by the acceptor, Murkle, Ordinary on the bills, reported a writer's doubt, whether to give a horning on it? And the Lords refused horning, as Kilkerran tells me, for I was in the Outer-House; for such bill would be null if not written by the drawer; and whether it was holograph of him could not appear to the writer or to us.