

## S E C T. XII.

## Conjunct Acceptors or Drawers of a Bill.

1675. January 19. JOHN M'MORLAND *against* ADAM MAXWELL.

IN an action at the said John's instance, against Adam, for payment of 200 crowns, French money, as having accepted a bill of exchange drawn by Henry Lavie, factor in Bruges, which was ordered to be paid by the pursuer, it was alleged for the defender, That he could not be liable *in solidum*, but only for the equal half, because the bill was drawn upon the defender and Patrick Maxwell, who were neither joined in society, nor did accept of the same as being liable conjunctly and severally; and so being *correi debendi* in law, they were only liable for their own part, or half. It was replied, That they, having accepted of the bill simply, without any such distinction or division, every one of them was liable *in solidum*. The Lords did find, That the bill being accepted in Scotland, where creditors are only liable every one for their own just half, if this were a debt contracted in Scotland, the defence is relevant; but the ground of the debt being for accepting of a bill drawn at Bruges, by a French factor, unless it could be alleged that the said Adam and Patrick Maxwell were partners, in which case they would be liable *in solidum*, they did remit to merchants, or others who did best know the custom of France, to give their opinion, if the said acceptation did make the said Adam liable *in solidum*, or only for his half.

*Fol. Dic. v. 2. p. 381. Gosford MS. p. 450. No. 735. & 736.*

\* \* \* Stair reports this case :

1675. January 29.—THERE being a bill of exchange drawn at Rouan upon two persons in Edinburgh, payable to M'Morland, ordering the said persons to pay the sum, without expressing conjunctly and severally, or any words equivalent, the bill being presented to Maxwell, one of the said persons, he accepted and signed the bill, without limitation; but the whole being demanded from him, he refused to pay any more than the half; whereupon the bill was protested. M'Morland pursues before the Dean of Guild of Edinburgh; Maxwell craved the cause to be advocated from the Dean of Guild, upon iniquity, because he had found Maxwell liable for the whole, seeing, by the common law, two persons obliged by the same writ are only understood to be liable severally, *et pro rata*, and not *in solidum*, unless they were bound conjunctly and severally. It was answered, That the custom of merchants must rule this case, by which bills drawn

No. 51.

Two or more acceptors of a bill of exchange are liable each *in solidum*, unless the contrary be specified.

No. 51. upon more persons, and simply accepted by one, or more of them, obliges all *in solidum*;

Which the Lords found relevant, and instructed by the testimonies of several knowing merchants chosen by the Lords.

*Stair, v. 2. p. 313.*

\* \* Dirleton also reports this case :

A BILL of exchange being drawn upon three merchants, without mentioning that it was drawn upon them either severally or conjunctly, and one of the persons upon whom it was drawn being pursued for the whole sum in the said bill, being accepted by them all simply, without mentioning that they had accepted the same only for their own parts, it was alleged, That they were only liable for their own parts, being *correi debendi*; which is understood in law, that they should not be liable *in solidum*, unless it were so expressed, especially seeing the pursuer cannot say, that they were either partners, or that each of them had provision extending to the whole sum.

The Lords, having thought fit to try the custom of merchants, and to take the opinion thereupon of certain merchants in Edinburgh, and the report being positive, that it was the custom of merchants, both in the place where the bill was drawn and here, that there should be action *in solidum* upon such bills, when they are drawn and accepted simply in manner foresaid, found the defenders liable *in solidum*.

*Dirleton, No. 231. p. 110.*

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1685. January 17. WILLIAM ROBERTSON *against* MR. DAVID FORBES.

No. 52.

In this case, the Lords found the bill of exchange being payable to two, they were *correi credendi*, and that payment made to any one of them liberates the debtor for the whole, reserving action to the other party, as accords, to call him who received the money to account for his proportion of it.

*Fel. Dic. v. 2. p. 381. Fountainball, v. 1. p. 332.*

\* \* Harcarse reports this case :

1685. January 17.—THE sum in a bill of exchange, payable to two persons in a particular society, was found to divide, and to belong to them equally as *correi credendi*; so that neither of them could indorse the whole sum, but only the half.

*Harcarse, (BILLS OF EXCHANGE AND RECEIPTS), No. 163. p. 36.*