

1697. July 21.

STONEHEWER *against* INGLIS.

## No 6.

Money, *in specie*, was sent to a third party, with verbal instructions to pay a certain bill with it. The money not having been so applied, was found liable to the arrestment of other creditors, without regard to the bill.

STONEHEWER, merchant in London, being debtor to John Inglis writer to the signet, and John Mackay of Palgowan, and sundry others, he sent L. 200 Sterling of milled money to Bailie Clark in Edinburgh, and verbally signifies, that it was to pay part of Palgowan's bill of exchange; but before any written order came, John Inglis having protested his bills for not payment, arrests the money in Clark's hand. A competition arising between them, Palgowan objected, *imo*, Against John Inglis's instrument of protest, that it was null, the witnesses neither being subscribing nor designed, contrary to the act of Parliament 1681; *2do*, The money being sent to be delivered to Palgowan, this stated the dominion and property of the same in him, and so being no more Stonehewer's money, it could not be affected by his creditor's arrestments. *Answered*, The act of Parliament relates only to intimations of assignations, but not of bills of exchange, and their protests; for such are regulated by the *jus gentium* for the more expedite dispatch of trade and commerce; and municipal laws are not the rules in such cases; and by the declaration of knowing merchants, given in, no such solemnities are required in protests of bills of exchange. THE LORDS found custom behoved to be the rule here; and therefore repelled the objection, and found it to be no nullity. To the *2d*, John Inglis *answered*, That before the delivery, the money *in specie* continued still to be Stonehewer's, and so affectable by his creditors' diligence; for he might have any time before delivery altered his resolution, and countermanded his first order of giving it to Palgowan, and ordered it for another; and in law *traditionibus non conventionibus seu nudis pactis transferuntur rerum dominia*. THE LORDS found the dominion not transmitted till delivery; and therefore preferred Inglis the arrester. See WRIT.

*Fol. Dic. v. 1. p. 512. Fountainball, v. 1. p. 788.*

1706. January 16.

JOHN GRAY *against* LORD ROSS.

## No 7.

The creditor in a bill, having given orders to his trustee, to whom it was indorsed, to pay a part of the money to a third party, his creditors, the Lords, notwithstanding the order, found the

SUTHERLAND of Kinauld draws a bill upon Mr John Middleton, payable to Gordon; Middleton accepts, and Gordon delivers the bill to Kinauld indorsed to a blank person, in which David Ross his name is filled up.

Middleton being charged in the name of David Ross, he suspends on multiplepoinding, and also upon partial payments made to Kinauld, for whose behoof he alleged the bill was indorsed to David Ross.

David Ross being ordained to be examined, depones, that the bill was sent to him blank by Kinauld, and he ordered to fill up his own name, for security of a small sum due by Kinauld to himself, and the remainder was to be applied for relief of cautionries wherein Mr Charles Ross stood engaged for Kinauld, and