

* * * The same case is reported by Dalrymple :

NAUGHTON draws a bill of L. 50 Sterling upon Orem and Ritchie, which Orem accepts simply, and Ritchie accepts for his half; Orem being insolvent, he insists against Ritchie for the whole sum in the bill; upon these reasons: *1mo*, The bill being drawn upon Orem and him, in the course of exchange, it was understood, that they should both be bound *in solidum*; and, if Ritchie had not been willing to accept, he might have suffered the bill to be protested; but seeing he did at all accept, he became simply bound; and there was no regard to be had to the adjected quality, which was unwarrantable. *2do*, Orem and he were in co-partnery, and wrote joint letters; whereof two were produced to Naughton, desiring him to afford them credit for the value of a cargo of wine, to be put aboard a ship then lying at Bourdeaux; and promising to honour his bills; and the bill bears *per advice*; and the letter of advice not being produced, the draught is presumed to be for re-imbursing his advance on the foresaid commiffion.

No 80.

It was *answered*: The acceptor of a bill, with a quality, is only bound in the terms of his acceptance; and the presenter of a bill, if not willing to admit of the quality, may protest for not acceptance; but having made use of the bill, with a qualified acceptance, ought to hold himself content with the terms thereof; and the defender denied the co-partnery, or that he was debtor to the drawer.

It was *replied*: The letters proved the co-partnery, and obliged both to honour Naughton's bills. *2do*, The qualified acceptance was occasioned by the bills being sent to Ritchie in the country; but that cannot prejudice the possessor; because, if he had not accepted at all, he would have been liable upon the letters produced *in solidum*; and his acceptance for the one half can put him in no better condition for the other half, than if he had not accepted at all.

THE LORDS found, that he ought to have accepted simply, and that he was liable *in solidum*.

Dalrymple, No 95. p. 134.

1714. November 23.

WILLIAM KING against AISDALE.

JOHN RICHARDSON, draws two bills on William King; one for L. 75, payable to Robert Aisdale; and another for L. 50, to Adam Wright.

King, having no effects, refuses to accept; but, in respect of Aisdale and Wright, who were linen-merchants, and wanted the money to be laid out at a market, King takes receipts of the money on the back of the said two bills; and advances L. 100 Sterling; for which he takes Aisdale and Wright's promissory note, obliging them jointly to repay the said sum to King; in case that Richardson should not, in due time, pay a bill that King was to draw upon him for the like sum. This obligation is dated the 5th of August 1709.

No 81.

The possessor of a bill not accepted, borrowing the money from the person drawn upon, on an obligation to repay, if the drawer should not pay by a time limited; found not entitled to plead,

No 81.
when the money was demanded from him, that the drawer had not been discussed. But, the creditor having re-drawn on the drawer, and not having duly negotiated the draft, was found, on that account, to have lost his recourse on the person to whom he had paid the money.

Upon the 2d of October thereafter, King draws a bill of L. 100, payable to Mr John Glassils, upon the 4th of November, directed thus, *To Mr John Richardson, at the Three Cups in St John's Street, near Smithfield, London*; which bill is protested for not payment upon the 7th of November.

King now pursues Aisdale, one of the two obligants, for payment of the said L. 100 Sterling, with annual rent and exchange.

It was *alleged*: No process, because Richardson was not duly discussed; no diligence being done against him; but only a protestation for not payment.

It was *answered* for the pursuer: That he was under no obligation to discuss Richardson; he having advanced the money, not upon Richardson's bill, but upon the defender's obligation; bearing, that if the money were not duly paid by Richardson, he and Wright should repay the same.

'THE LORDS repelled that allegiance.'

It was further *alleged*: That King having taken receipts upon Richardson's bills; and likewise having taken a separate qualified security from the defender and Wright, he ought, *quamprimum*, to have drawn upon Richardson, for his own and the defender's relief; and, in case of not due payment, he ought to have acquainted the defenders, and furnished them with instructions, viz. Richardson's former bills and discharges; whereby they might recur and operate their own relief: All which he neglected; and did not so much as draw a bill till the 2d of October, near two months thereafter, and not payable till the 4th of November, never presented nor protested for not acceptance, but, three days after the term of payment, protested at London, at a place pretended to be Richardson's dwelling-house; but he not found personally, nor any advice for what appears given to him of such a draught, or that he had advanced money, or that he was to draw.

The pursuer *answered*: That having advanced his money in a friendly manner, he was obliged to do no diligence; for, by the obligation libelled, which is clear, there was no bill then drawn; but to be drawn; in which he might use his own discretion to draw when he thought fit; and yet he did draw within two months; and protested for not payment when the bill fell due, and advised the defender of the protest: Neither was he obliged to deliver up the instructions of the payment of Richardson's former bill; nor could he do it safely, unless the defender had offered payment; and, upon the whole, he was nowise in the case of a possessor of a bill, who is bound to negotiate with diligence.

It was *replied*: That the pursuer having taken double security, viz. a receipt of the money in Richardson's bill, whereby Richardson became bound to answer his re-draught; and, by the quality of the defender's obligation, being bound to re-draw; and the defender only liable in case of Richardson's not due payment; the defender was but *subsidiarie* liable, and the pursuer obliged to have drawn more timeously, and upon fewer days; and to have presented the bill for acceptance, or protested in case of not acceptance; and to have advised the defender and Wright, that they might have seen to their relief.

'Which the LORDS sustained, and assailed the defender.'