

No 57.

Bills, p. 166. *2do, Et separatim*, the arrestment is null, as being on a dependence, not maritime, before the Admiral.

Replied for Mr Turnbull, Mr Anderfon's precept from Arbuthnot is not such an order and bill as is meant by my Lord Stair and Mr Forbes, in the places cited, and which by our practice requires no intimation; it not being for a liquid sum, but only an order to Heriot to fit and clear accounts anent the price of victual, and other merchant goods, with Anderfon; who, albeit the balance was to be paid to him, could not pretend that the right thereto was formally stated in his person, by virtue of the precept, without completing his right by intimation; otherwise all manner of conveyances among merchants might be pretended as privileged from the necessity of intimation, which would tend to unsecure arrestments, by latent rights. Again, this precept cannot partake of the privileges of bills; because summar diligence by horning could not proceed thereon, in that it requires a previous compting for liquidating the debt; which can only be prosecuted by an ordinary action. *2do*, There is nothing more ordinary than to pursue payment of bills of exchange before the Admiralty, and it was never heard that the Admiral's decret was reduced on that account; and if it were otherwise, many would suffer in their rights and property.

Duplied for Mr Anderfon, Though horning were not competent on his precept, that could not exclude him from the other privileges of a merchant writ; for bills of exchange, after six months, are not the subject of summar diligence; and notes of merchants are valid without the ordinary solemnities of common writs; though at no time horning could be raised on them. *2do*, The Admiral's jurisdiction is limited to maritime causes; and a bill of exchange is no more a maritime subject, than a bond granted by one person to another: Nor can there be any single instance given, where the Admiral's incompetency to judge concerning bills of exchange being proponed, was repelled by the Lords of Session.

THE LORDS found Mr Anderfon's precept could not carry a right to the subject without intimation; and preferred Mr Turnbull the arrester, albeit his arrestment proceeded on an Admiral precept. *See JURISDICTION.*

Forbes, p. 126.

1724. February 1.

JAMES FAIRHOLM, Merchant, *against* Bailie JAMES GORDON of Ellon.

BAILIE GORDON having given a letter of credit to my Lord Duffus, upon Mr Fairholm, he, in compliance therewith, advanced the money, and took my Lord's bill upon the Bailie.

In a pursuit for the sum of the bill, at Mr Fairholm's instance, the Bailie *alleged*, That no formal intimation had been timeously made to him of this draught, by which neglect he had lost the fund of his relief.

It was *answered* for Fairholm, That he had made a verbal intimation to the Bailie much about the time the bill fell due, which, by the custom of merchants,

No 58.
Verbal intimation of a draught found sufficient.

was sufficient, and there was no need of a formal intimation; 7th January 1681, Ewing *contra* Burnet, Stair, v. 2. p. 828. *voce* LETTER OF CREDIT.

No 58.

THE LORDS found the verbal intimation sufficient.

Reporter, *Lord Cullen*.

Edgar, p. 20.

1724. *February 13.*

ALEXANDER STEWART, Merchant in Edinburgh, *against* WILLIAM ELLIOT of London, Merchant.

In a multiplepounding, raised at the instance of Alexander Naughton, merchant in Rotterdam, as factor for Scot and Co., the creditors of William Scot, merchant in Edinburgh, were called, and, among others, Alexander Stewart and William Elliot, to dispute their several interests, in the subjects, effects, or money, belonging to Scot and Haliburton, his partners, which were in Naughton's hands.

No 59.

A bill protested for non acceptance, found to denude of the subject for which the bill was drawn.

Stewart's interest was a bill of exchange for 4,800 guilders, drawn by Scot upon Naughton, in April 1708, and payable, the first of July thereafter, to Haliburton, and indorsed by Haliburton to Stewart, that he might have both the partners bound to him. When the term of payment of Mr Stewart's bill came, he presented the same to Naughton for acceptance and payment; but Naughton refusing, in respect there was not so much in his hands, of the produce of wool, and other effects of the drawers, which had been consigned to him, Mr Stewart protested for non-acceptance, 5th July 1708.

Mr Elliot's interest was bills for L. 500 Sterling, accepted by Scot in February 1708; upon which he had used diligence; and denounced Scot the 4th May thereafter; and, upon the 13th of that month, he obtained a gift of his escheat, which passed the seals the 22d of November following; and, upon the 13th of December, said year, he obtained a general declarator in absence; but pursued no special declarator, nor made any use of his gift, till this competition.

Mr Stewart craved to be preferred, in respect that the draught was a virtual assignation to what effects were in Naughton's hands, and the protest equivalent to an intimation, which completed his right: That the draught was before the rebellion or denunciation, and the protest prior to the declarator, or even to the gift of escheat; for, though the gift was signed the 13th of May, yet it was not presented to the seals (by which the King speaks,) till the November following; which period only is to be considered as its date. In support of this ground of preference, the authority of Sir George M'Kenzie was brought, B. 2. tit. 5. of his Institutes; where he lays down rules in the case of single escheats. And Mr Stewart further contended, That he was even in a stronger case than that of a common assignation which needed intimation; because orders, among merchants, to pay, need no intimation, but are of themselves complete rights, as my Lord