

No 138.

A bill, payable at so many days *sight*, need not be presented, as soon as possible.

1735. February 7. INNES against GORDON.

ROBERT INNES merchant in Elgin, on 29th May 1732, drew a bill upon Honyman and Forsyth, merchants in London, for L. 28 : 2 : 2, payable to William Gordon, merchant in Forres, or order, at 14 days after *sight*. Gordon indorsed it to Thomas Morison merchant in London.

The bill might, in course of post, have arrived in London on 12th June. If it had been presented for acceptance that day, it would have been due, on 29th June, the last day of grace. It was not presented for acceptance till 22d June. It became due 5th and 8th July; on the 8th it was protested for not payment. The acceptors had absconded on 3d July. Notification of the dishonour was made in course of post to the drawer.

A process for recourse was brought before the Court of Admiralty. The Judge found, That the bill not being drawn at days after date, but at days after *sight*, the holder was not bound to present it in course of post; and the defender was liable in recourse.

A suspension was offered, which was refused; and the drawer paid the money. He afterwards brought an action of reduction and repetition; on these grounds, That the bill had not been duly negotiated, not having been presented for acceptance in due time; that the porteur in London had refused to incarcerate the acceptors, or give in a claim to the assignees of their bankrupt estate; that the bill had not been protested at the place of payment; and that it was scored and *maculated* on the back.

*Answered*: The bill being drawn at 14 days *sight*, the possessor was not bound to negotiate it in so strict a manner as other bills. Such a bill is of the nature of a letter of credit; and the holder has a discretionary power, to fix the term of payment to suit his own conveniency. The argument from the exact diligence requisite in mandates *in re mercatoria* does not apply; the *discretionary power* being implied in the transaction.

The porteur in London did all he was bound to do, when he returned the bill in order to preserve recourse against the drawer.

The bill, though payable at the Royal Exchange of London, was properly protested at the acceptor's house in Bur-street. It is alleged that the contrary was found, Urquhart against M<sup>c</sup>Kenzie, No 137. p. 1561.; but in that case, recourse was denied for want of notification, not on account of irregularity in the protest.

As to the *maculation*, it was visibly no other, except that the name of Morison the indorsee having been written on the back, in expectation of payment, was scored out when payment was not made by the acceptors.

THE COURT found the letters orderly proceeded; and repelled the reasons of reduction.

A. Hugh Forbes.

Alt. Advocatus, Jas Graham, sen.

Fol. Dic. v. I. p. 101. Session Papers in Advocates Library.