1707. *February* 18.
RUTHERFORD and SANGSTER *against* DONALDSON, Merchant in Kirwall in Orkney.

No. 53.
Found in conformity with M'Morland against Maxwell, No. 51. p. 14673.

THE case is, Donaldson having furnished Rutherford and Sangster with some money, he draws a bill of exchange upon them, payable at Edinburgh, which both of them accepted; and having charged Rutherford thereon, he offers a suspension, on this reason, that, there being two obligants in the bill, and not mentioning them to be bound conjunctly and severally, he could not be charged for the whole, but only *pro rata* for the half; for in bonds where debtors are not bound conjunctly and severally, the debt divides, neither are they liable *in solidum*. Answered, Bills have a greater privilege, for the currency of trade, than bonds, and are regulated *jure gentium*, and by the custom of foreign mercantile nations, where every acceptor of a bill becomes liable *in solidum*. The Lords found so, and repelled the reason of suspension.

Fol. Dic. v. 2. *p.* 381. *Fountainhall, v.* 2. *p.* 350.

1724. *December* 10. A. *against* B.

No. 54.

IN answer to a question proposed by the Lord Cowper, the Lords found, That if two or more should accept a bill, each of them was bound *in solidum*.

Fol. Dic. v. 4. *p.* 296. *Edgar, p.* 129.

1742. *June* 17.
JOHN ALEXANDER and MARY HILL, *against* MARGARET SCOT, and JOHN WILSON, her HUSBAND.

No. 55.
A bill is good, tho' directed to one as principal, and to others as cautioners.

ANDREW LANG drew a bill upon Thomas Scot, directed to him as principal, and three others as cautioners, conjunctly and severally. All the four accepted; and, thereafter, Lang indorsed the bill to two of the cautioners; upon which these two indorsees brought an action against Margaret Scot, as representing her brother Thomas Scot, who was bound in the bill as principal.

Objected, That bills were originally introduced into the practice of nations for the utility of commerce, and, in that view, were indulged with extraordinary privileges; that they had received a determinate form, consisting allenarly of the order to pay the sum therein contained, and the acceptance of that order; so that every other obligation devised in the form of a bill, and every clause in such writing, contrary to the proper form, or inconsistent with the nature thereof, have been deemed sufficient to vacate that writing, as being no longer of the proper tenor and nature of a bill. Upon these principles it has been found, that nothing is the proper subject of a bill but money; and that an obligation, in that form, to deliver a fungible, is not valid. This, and many other instances that

No. 55. could be mentioned, shows, that the law does support obligations foreign to the nature of bills. In the present case, the obligation upon the acceptors is constituted in the form of a security, by principal and cautioners, which is as foreign to the proper form of a bill as any thing can well be. If practices of this kind were encouraged, there is no sort of obligation which might not be transmographied into the form of a bill. 2*dly*, Supposing the bill not totally void, yet the direction to one as principal, and the rest as cautioners, ought not be regarded, so far as concerns these qualities; and consequently the defenders can only be liable for one fourth of the bill, as if they had all simply accepted the same.

Answered, Bills drawn upon several persons, frequently bear that the effects were delivered to one of them, which constitutes that one principal debtor; and there does not appear to be any difference betwixt a bill of that draught, and a bill in a simple form, without mentioning to whom the value is delivered, but with a direction to one of the persons as principal, and to the others as cautioners. The direction qualifies the acceptance; and if one should accept in case the effects come to his hand, or payable at a further day than that mentioned in the bill, the qualified acceptance is good, and affects the bill: The creditor, by admitting such quality, is understood to consent and is thereby tied down to the qualities. And much more will the acceptor be bound by the terms of the direction, that being a matter purely among themselves, to which they agree by their acceptance adhibit. See 21st July, 1735, William M'Whirtor. (Not reported.) See APPENDIX.

And as to the second, answered, That qualified acceptances are ordinary in bills; and why the quality may not be inserted in the direction, as well as subjoined to the acceptance, is hard to conceive.

The Lords repelled the nullity objected to the bill pursued on.

Fol. Dic. v. 4. *p.* 296. *C. Home, No.* 116. *p.* 328.

1744. *December* 15. LORD LYON and SPYNIE *against* ARDOCH.

No. 56. Three persons having borrowed a sum, on their joint security, and lent it on a bill payable to them three, it was found two might pursue for the whole.

Ross of Clava being debtor to Gordon of Ardoch in £.100 Sterling, was pressed for the money; on which the Lord Lyon, Sir Robert Monro of Foulis, and Brody of Spynie, borrowed an equal sum, and gave it to Ardoch, on his bill, payable to them three, who, it would seem, were not willing to rely on Clava's security; and the bill was put in Spynie's hands.

Ardoch paid up the annual-rents, and from time to time renewed the bill; but stopping, at length, was pursued on the last granted by him, by Lyon and Spynie, Sir Robert Monro having disclaimed the process.

In this action, the only question was, How far two of the creditors in the bill could pursue for the whole? the defender alleging the obligation was equal to them all, which therefore divided amongst them; and the pursuers contending, that the bill being given for money, which they had jointly borrowed, behoved