

No. 31. 1743, July 6, 29. RAMSAY *against* HOGG.

A BILL on London payable 40 days after date, not protested for not acceptance or not payment till the 44th day after date, being the day after the last day of grace, the question was, Whether that was due negotiation so as to give recourse against Hogg the indorser, especially that the last day of grace was not a post day to Scotland, but the next day was, when it was returned protested? The Lords found, that there being no protest on the day of payment, there lay no recourse.—29th July Unanimously adhered, and refused a bill.

No. 32. 1743, Nov. 8, 18. OCHTERLONY *against* HUNTER.

THE last interlocutor altered by President's casting vote, being seven to seven. For altering were Royston, Minto, Drummore, Strichen, Murkle, Leven, *et Ego*. For adhering were Justice-Clerk, Haining, Kilkerran, Dun, Balmerino, Monzie, and —. We repelled the defence that Hunter was bound only *dicis causa*, and as a name; *2do*, Repelled the defence of usury unanimously. The next point was upon the want of notification. The President seemed to think in the common case of a bill protested for not payment the defence would be good; but that one paying *supra* protest was not tied to such strict negotiation, and that it is incumbent on Mr Hunter to prove damages. I again humbly think that there was no difference as to the point of notice betwixt a bill protested by the creditor or indorser and one paying *supra* protest, and therefore that want of notice barred recourse, as we found lately in the case of William Hogg, unless the payer could prove no damage, as if the bill bore value in account. Kilkerran and Drummore were of the same opinion. Arniston had given his opinion yester day, that there was a difference betwixt a protest for not payment, and a payment *supra* protest as to the point of notification, and renewed the same opinion this day, but concluded that as punctual notice was necessary in this case as in any. In the reasoning, it cast up that several bills were drawn by Hunter the 14th of April, long after he might have notice of the bills paid *supra* protest on the 18th March. We all agreed that was a damage, and barred recourse as the bills paid on said 18th March. We first found it competent to Hunter to object the want of notice, though he should not be able to qualify and prove damage:—Found the notification sufficient as to the bills paid on the 18th May and 23d May, but not for any of the bills formerly paid, and found that there is no notice of the bills thereafter paid: But found, that the not notifying the dishonour of the bills paid 18th March does not bar the recourse for the bills drawn by Hunter the 14th April, (the reason was, that by that very omission Hunter is freed from all those bills paid 18th March to much greater extent.) Thursday 9th, we repelled the defence on the pursuer's taking the obligation 1735. Repelled also the defence on the bond 1736, in respect of the docquet of the same date allowing the bills to be retained till Hunter should sign that bond. Delayed till Wednesday the 16th, the question as to the bond 1737, that Ochterlony may explain what papers or accounts passed betwixt them to apply this debt to such bills. Repelled the defence on the L.4500. Delayed the defence as to the L.1200 balance said to be due Mr Murray the 18th March. Sustained the defence as to the three bills last mentioned, where the writing on the back is signed by Ochterlony, and so cancelled as not to be legible.

Nov. 18, Repelled the defences on the delay of payment and on taking the bond 1737. Found that the balance in Ochterlony's hands of Mr Murray's money on 18th March 1736 ought by him to have been applied to pay the bills paid by him that day *supra* protest.

No. 33. 1743, Dec. 16. STRAITON *against* SCOTT of Millbie.

A BILL that went through the hands of several indorsers, being at last paid *supra* protest for the honour of the first indorsee, who repaid him, and the indorsations were scored, the first indorsee desired that the bill might be registrate at his instance in order to summary diligence; which we granted, as we did to Patrick Crawford of Auchnames, 13th January 1736. I had another difficulty. The drawer was in Hamburgh, and it was payable in Hamburgh, and I understood that it was drawn in Hamburgh, and I doubted if it was within the words of the act 1681, which are "foreign bills from or to the realm." And Arniston and others seemed to have the same difficulty. But upon looking at the bill, it was dated at Kirkwall in Orkney, and was clearly within the act.

No. 34. 1744, Jan. 5. DRUMMOND *against* GRAHAM.

A BILL bearing annual rent and penalty, being put in suit long after the alleged acceptor's death, a proof was brought to astruct the bill, and it was indeed very convincing, but it was only by parole evidence. We sustained the objection to the bill; *renit. multum* President, Arniston, &c.; and it carried indeed by the smallest majority to adhere to our former interlocutor of 9th December last.

No. 35. 1744, Feb. 22. ROBERTSON and HALIBURTON, *Supplicants*.

A BILL was accepted by a person drawn upon, but *supra* protest for honour of the original creditor, who had indorsed it; and it had then gone through several hands, and after that acceptance, was again indorsed to others, and then paid by Robertson, the person accepting *supra* protest; whereupon he and Haliburton applied for special warrant to operate against the drawer, and all others concerned. We granted it against the drawer, but we would not give it against any other.

No. 36. 1744, June 15. STEWART *against* EWING.

BREW drew a bill upon Faws for L.169 sterling, payable to Busta, indorsed to Ewing, which was protested for not-acceptance, 25th November 1736, when Faws had fish in their hand, but owed no money, and therefore refused acceptance. 15th December Stewart arrested in Faw's hands, and thereafter the fish had been sent to Barcelona for Brew's account.—The price was returned to Faws, and a competition arose betwixt Ewing, as creditor in the bill, and who concluded that that was a virtual assignation to the proceeds of the fish,—and Stewart, who insisted that a bill is no assignation, though it will give action against the person drawn on, if he wrongously refused acceptance, which cannot be said of Faws. The Lords appointed memorials, but they gave us little light; but the Court *nem. con.* found the arrestment preferable.