

No 82. bill implied an assignation to the effects; for such action would ly to the holder of a bill, where the correspondent, on whom it was drawn, came afterwards to have the drawer's cash in his hands, though at the time the bill was protested for not acceptance, he had neither cash nor effects of the drawer's; while yet, for certain such draught would not import an assignation to money, that came only into the correspondent's hands after the protest for not acceptance: But on this ground, that the mandate or order to pay, is supposed to continue, and will have effect, how soon the correspondent comes to be possessed of value; but still under this exception, unless a mid impediment has interveened: And such the arrestment was considered to be in this case, as it is a habile diligence to affect the subject, and is for that reason preferable to the action. And therefore it was, that by the interlocutor here pronounced, it was only found that the protesting of the bill did not affect the fish, *so as to prefer the porteur to the subsequent arrestment.*

*Fol. Dic. v. 3. p. 79. Kilkerran, (BILL OF EXCHANGE.) No 10. p. 75.*

No 83.

Found, that a bill need not be protested for not acceptance, before the last day of grace.

1749. June 28.

JAMIESON *against* GILLESPIE.

It has been found, that a bill payable at usances, need not be presented for acceptance sooner than the term of payment. It has also been found, that, when the term of payment comes, it must be that very day presented for acceptance; for, that notwithstanding there are days of grace for payment, there are none for acceptance: And, no longer ago than 6th July 1743, Ramsay against Hogg, (*infra h. t. Div. 4. Sec. 2.*) where the *species facti* was of a bill drawn, payable at London forty days after date, not protested by the indorsee till the day after expiry of the three days of grace; when, at one and the same time, it was protested for not-acceptance, and for not payment: The Lords willing, it would seem, to avoid determining the question, Whether it was sufficient to protest the next day after the days of grace; (a question that is at present in dependence in another case,\*) found in the words following: 'That, in respect it was not alleged, that the practice with respect to bills of exchange in London, differs from the practice in this country; which is, That bills must be protested for not acceptance, on or before the day of payment; the pursuer could have no recourse.' And, in the terms of that decision, the Ordinary, in the present case, found, 'That the bill not having been presented for acceptance, on or before the day of payment, nor earlier than the last day of grace; when, once for all, it was protested for not payment; the bill was not duly negotiated, and that no recourse lay.'

But the pursuer having reclaimed, the Lords doubted, whether the practice of merchants, even in this country, was such as had been taken for granted in the case of Ramsay and Hogg; and the merchants of Edinburgh, to whom the Lords recommended to give their opinion, declared that the bill in question was duly negotiated, by presenting the same for payment, and protesting for want of

\* See Div. 4. Sec. 2.

it on the last day of grace; and that there was no necessity for previously presenting for acceptance, and protesting for want of it on or before the day of payment; with whom the merchants of London also agreed.

THE LORDS, therefore, receded from the judgment they had given in 1743, in the case of Ramsay and Hogg, and found, 'It was sufficient to protest the bill for not payment, within the days of grace; and repelled the defence of not duly negotiated, for not having presented the bill for acceptance when the same became due.' See This case by D. Falconer, Div. 4. Sec. 2.

*Kilkerran*, (BILL OF EXCHANGE.) No 23. p. 87.

No 83.

1768. November 17. GAVIN against KIPPEN and Co. and Others.

MESSRS DUNLOPS of Rotterdam, having sold the ship Dorothy to the Whale-fishing Company of Borrowstonnefs, at the price of L. 2100 Sterling, drew bills, for L. 400, on John Campbell, one of the partners, payable to David Gavin, to be placed to account of the Dorothy.

For Campbell's reimbursement, the Messrs Dunlops gave him an order on the Company; who afterwards obliged themselves to make payment to him.

Mr Gavin protested the bills for not acceptance; and Messrs Dunlops having failed, arrestments were used, by Kippen and Co. and Others, in the hands of the Whale-fishing Company.

In a competition, 'the Lords preferred Mr Gavin,' upon the principles established in the case, *Mitchel contra Mitchel*, No 60. p. 1464.; where it was found, that a protest for not-acceptance was equivalent to the intimation of an assignation.

It was *argued* for Kippen and Co. :—That, as the bills were drawn upon Campbell, and protested against him, there was no intimation to the Whale-fishing Company. But it was *answered*, That, after the obligation granted to Campbell, the price fell to be considered as in his hands; and was effectually assigned to Mr Gavin, by the bills drawn upon Campbell, and protested before the date of the arrestments.

*Act. Wight.*

*Alt. Lockhart.*

*G. Ferguson.*

*Fac. Col. No 79. p. 327.*

1778. March 4. JOHN SPOTISWOOD, against ARCHIBALD M'NEIL.

GRAHAME being indebted to Spotiswood, gave him a bill for the money on M'Tavish, his debtor. M'Tavish refusing to accept, the bill was duly protested for non-acceptance, and afterwards for non-payment, 1st May 1775.

Thereafter Spotiswood, and his attorney, raised diligence on the bill, and arrested, in the hands of M'Tavish, 30th October 1775; and brought a furthcoming. Archibald M'Neil, a creditor of Grahame's, likewise arrested in the hands

No 85.  
A bill protested for not acceptance, found to be equivalent to an intimated assignation, and preferable to a pos-