

No 145.

On a bill and answers, a proof was allowed of the custom at London, in protesting bills from Scotland; whereby it came out to be the custom to protest them on the third day; but some of the witnesses gave their opinion, that the protest on the fourth ought to be sustained, unless damage had accrued to the drawer by the delay; and others gave instances within their knowledge of protests on the fourth, whereon the money had been recovered.

The Lords adhered.

Another bill was presented; to which it was answered, The matter was settled by two interlocutors: Wherein it was replied, They were not consecutive, as the second was on new matter.

The Lords, by their interlocutor adhered to finally, found recourse was due. See Note under No 131. p. 1384.

A. J. Grant. Alt. Ferguson. Clerk, Justice.

D. Falconer, v. 2. No 187. p. 226.

1749. June 29. Andrew Jamieson against Gillespies.

WILLIAM SCOTT drover, drew on John Scoon of Whitlawside, drover, 21st February 1745, for L. 80 Sterling, payable 18th May next, to Thomas Gillespie, at Mr William Highmore's in London, which was indorsed to John Gillespie; by him to Andrew Jamieson, merchant in Edinburgh; and by him to Claud Johnston, by whom it was protested for not payment 21st May, and re-indorsed to Andrew Jamieson.

Mr Jamieson pursued the Gillespies for recourse; who made answer, that the bill was not duly negotiated, being only protested for not payment; whereas it ought to have been presented for acceptance; and if that was not done, protested for the failure.

The Lord Ordinary, 20th January 1748, 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 against drawer or indorsers.

On a petition, pleading a distinction betwixt a bill payable at a certain time after sight, which behoved to be presented for acceptance, and one due at a day, which needed not; and answers.

The Lords having taken the opinion of merchants at London and Edinburgh, who agreed that the diligence was regular; and one of whom founded his opinion upon its being a bill on a drover, who seldom came to town, and could not be found to present it to him;

Found no necessity that the bill should have been presented for acceptance. See No 83. p. 1494.

A. A. Macdougall. Alt. Lockhart. Clerk, Gibson.

Fol. Dic. v. 3. p. 83. D. Falconer, v. 2. No 75. p. 8L.

No 146.

Found, that a bill need not be presented for acceptance, and protested for non-acceptance, till the last day of grace.