

No 65.

afterwards having made draughts on him for equivalent sums, that, from the time Alexander accepted of the draughts on him, he became full proprietor of those bills, which had been drawn or indorsed by his brother payable to him. For even supposing, as the pursuer states it, that these indorsations had been to Alexander only as factor, and that the design was to recover the money, and be accountable for it to his constituent; yet, whenever Andrew came to draw upon Alexander for an equivalent sum, the accepting of that draught was an accounting to Andrew, for the effects he had in his hands: He ceased then to be debtor to Andrew, and became debtor to the party to whom Andrew's draughts were made payable; consequently, as the onerous cause of his acceptance, the effects of Andrew, he had then in his hands, became absolutely his own property. If a contrary doctrine were true, this manifest absurdity would follow; the factor would be bound to make furthcoming the effects that had been put into his hands; he would stand absolutely bound to his employer's creditors; and, for his reimbursement, would only have a *pari passu* preference on these very subjects, in contemplation, and for satisfaction of which, he had accepted the draughts. Perhaps Alexander was not obliged to accept of draughts on him; for, until such time as he had recovered payment of the bills indorsed to him, he had strictly no value of his brother's in his hands. But if he did accept, it was an accounting for the subject of the bills indorsed to him before payment; and those bills which he formerly held for value in account, he now had for a just and onerous cause; consequently they were as much his property; as bills could be of any other onerous indorsee. *Lastly*, From the extract of the pursuer's books, it appears he looked upon those bills as become his brother's property by the indorsation; for, he debits Alexander with all the bills indorsed; gives him credit for the whole draughts made by Andrew upon Alexander; and states the balance as arising from part of those draughts being returned protested; not arising from Alexander's having failed to account for any of the bills indorsed to him: And this the defender thinks is a stronger argument against the pursuer, than any he can draw from the stating of the accounts by Alexander.

THE LORDS found Andrew Forbes pursuer, preferable to Abel Fonnereau, executor-creditor of the deceased Alexander Forbes, with respect to the Scots bills made payable to Alexander, or indorsed to him for value in account; except in so far as the executor-creditor shall make appear, that Alexander Forbes, either by payment, or his acceptance of bills drawn on him by his brother Andrew, stands creditor to Andrew. *See FACTOR.*

*Fol. Dic. v. 3. p. 77. C. Home, No 175. p. 291.*

No 66.  
Scoring the  
indorsation,  
re-inveits the  
indorser.

1752. January 7.

THOMAS and ADAM FAIRHOLMS, Petitioners.

A BILL was drawn, 2d October 1751, by Sir Robert Richardson, of the Engineer-company, residing at Perth, upon James Cockburn, Esq; at the Office of

Ordinance in the Tower of London, ' Ordering him, ten days after date, to pay ' to James Grieve, merchant in Berwick, the sum of L. 40 Sterling; and which Grieve, upon the 4th October, indorsed to William Rutter, merchant in London, who duly protested the same at the Office of Ordnance, against the drawer and all others concerned.

This bill Rutter returned to Grieve, with Grieve's indorsation scored; and Grieve again indorsed it to Thomas and Adam Fairholms; and they having given in the protest to be registered in their name; the Clerks of Session refused to do it without authority from the Lords.

The Fairholms, therefore, now apply for an order upon the Clerks, to register the protest in their name, as what is necessary in order to their having summary diligence against the drawer; and, in their application say, that Rutter could not reindorse to Grieve, as no merchant will indorse a bill once protested; and that, in practice, the indorsee returning the protested bill to the indorser, with the indorsation scored, the indorser is, by that alone, understood to be re-invested therein.

The Lords inclined to have granted the desire of this petition, in respect that the like was, from the Bench, observed to have been done in former cases; but superseded advising the petition till the letter of advice from Rutter to Grieve should be produced.

And the same having thereafter been produced, the Lords granted the desire of the petition.' See No 8. p. 1403.

*Fol. Dic. v. 3. p. 77. Kilkerran, (BILL of EXCHANGE.) No 28. p. 91.*

1760. July 17.

LADY CASTLEHILL, against CHRISTIAN WATSON, and ARCHIBALD CAMPBELL, her Son.

WILLIAM, Bishop of Murray, father to the pursuer, had three precepts upon the Treasury, preceding the Union, for L. 100 each. In order to obtain payment, he assigned them to John Stuart, as trustee for the pursuer. Stuart granted a factory to David Gourlay, writer in Edinburgh, authorising him to uplift the contents of these precepts, and to account to him, or his order. Gourlay received a debenture for the said L. 300 in his own name; which he indorsed to John Cuthbert, younger of Castlehill. Mr Cuthbert again indorsed the debenture to John Watson, in the following words: ' Pay the contents to John Watson, younger, merchant in Edinburgh, or order.' It was agreed, that John Watson's executor afterwards received payment of the full contents of this debenture.

The pursuer, Lady Castlehill, brings a process against the Representatives of John Watson, setting forth, That the debenture had been indorsed to Watson, without any value, as trustee for her; and, therefore, concluding, that his repre-

No 66.

No 67.

An equivalent-debenture passed through several hands, by simple indorsation, not bearing for value. Action was raised against the last indorsee, on the ground, that he held the debenture without value. Found, that the indorsation presumed value, as in a bill of exchange.