No 66.

Ordnance 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 regiſtrate 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 de-'ſire 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.

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.

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 67. sentatives ſhould be decerned to pay her the contents, with intereſt. The only point inſiſted upon in the cauſe, was as follows:

Pleaded for the purſuer: The indorſation of this debenture does not bear to be for value; and, therefore, the preſumption is, that it was only in truſt. Whatever may be the law with regard to bills of exchange, which, by a fiction, in favour of commerce, are underſtood to be bags of money, and transferable, from hand to hand, by ſimple indorſation; yet, with reſpect to debentures, and other writs, a ſimple indorſation, ordering payment, can only be conſtructed in law as a mandate to receive, implying an obligation to account, unleſs the indorſation expreſsly bear value received.

It frequently happens, that a number of creditors indorſe their grounds of debt to one perſon, in order to operate payment. When ſuch indorſations do not bear value received, they can only be conſtructed as a truſt; and the indorſee remains bound to account, or retroceſs, when called upon for that purpoſe. If the indorſation bears value received, the indorſee is then a mandatar *in rem ſuam;* that is, he is entitled to receive and diſcharge on his own account, and to apply what is received to his own uſe: But even ſuch indorſation, in the eye of law, is no transfer of the property. On the other hand, an indorſation to a bill, inſtantly conveys the property, as part of the conſtitutional right of bills in the commercial law.

Answered for the defenders: The debenture itſelf bears *in gremio*, that it is transferable by indorſement; and, it is certain, that the greateſt number of equivalent debentures, were in uſe to paſs by general indorſations of that kind. A ſimple indorſation of a debenture fully conveyed the property to Watſon; and he was not bound to account to any perſon. This muſt be the caſe, wherever a writing is transferable by indorſation, except where the indorſation is qualified to be for the behoof of the indorſer.

The doctrine is confirmed by the debentures themſelves, bearing to be transferable by indorſement. As the greateſt part of them were in uſe to be conveyed in this manner, this is a demonſtration that the law was ſo underſtood. It would give riſe to very great confuſion, and many law-ſuits, if every perſon, to whom a debenture has been conveyed, by a general indorſation of this nature, ſhould be found liable to account for the value.

No reaſon appears for eſtabliſhing a difference betwixt bills of exchange and debentures, as they are equally transferable by indorſement. In both caſes, the ſimple indorſation is a mandate *in rem ſuam;* which entitles the indorſee to receive the money for his own account.

The caſe put, of creditors conveying their debts to a common agent, cannot affect the preſent queſtion: For, in ſuch a caſe, where the indorſation is not for value, it always bears to be for the behoof of the indorſer; which, without doubt, renders the indorſee accountable.

'THE LORDS aſſoilzied the defenders; and decerned.'

Act. *Montgomery.* Alt. *Scrymgeour.* Clerk, *Gibson.*

Fol. Dic. v. 3. p. 77. Fac. Col. No 237. p. 432.

*** *See* Swan *against* Swan, Fac. Col. 30th June 1786, *voce* OATH of PARTY.
See Brand *against* Anderſon, 9th February 1711, *voce* BLANK WRIT.
See Neilſon *against* Bruce, Kilkerran, p. 70. *voce* PACTUM ILLICITUM.
See Thiſtle Bank *against* Leny, *voce* PROOF.
See Campbell *against* Graham, p. 1120.
See Aliſon *against* Crawfurd, *voce* WRIT.

SECT. IX.

Acceptance.

1702. *June* 25. MAN *against* WALES.

No 68.
Acceptance not preſumed of the date of the bill.

IN a reduction, upon the act 1696, of a diſpoſition granted by a creditor, as in prejudice of the purſuer, a prior lawful creditor, it was *objected*, That the purſuer was not a prior lawful creditor, being creditor by a bill drawn the ſame day the diſpoſition was granted; and accepted without a date. *Answered*, The acceptance muſt be preſumed of the ſame date with the bill; being among parties living in the ſame town.——THE LORDS refuſed to ſuſtain this preſumption.——(*See* The particulars, p. 1006, 1083, and 1183.)

Fol. Dic. v. 1. *p.* 97.

1725. *July* 8.
Mr JOHN KENNEDY of Kilhenzie, *against* Captain HUGH ARBUTHNOT of London.

No 69.
An accepted bill found to prove its date againſt the acceptor's heirs.

MR KENNEDY raiſed a proceſs againſt Captain Arbuthnot, as heir to Kennedy of Balterſan, for payment of three bills accepted by Balterſan, to which he had right.

It was offered, *in defence*, for Mr Arbuthnot—That he being an heir, the bills did not prove their dates againſt him; but were preſumed to have been granted on death-bed, in the ſame manner as holograph writs; and, therefore, he was not liable, unleſs the purſuer could inſtruct, that the bills were accepted when Balterſan was in *liege poustie*, or ſixty days before his death:—And the defender *argued*, That, by expreſs ſtatutes, all writs of importance ſhould bear writer's name and witneſſes; otherwiſe they ſhould be void; and that ſuch kind of obligements ought not to afford action againſt an heir, unleſs it could be proved, that they were owned by the acceptor, and ſeen before he was on death-bed; which appeared evident from the parallel of holograph writs, which have no effect againſt an heir, unleſs they are proved holograph; and, of a date, before the granter came on death-bed: That there was greater opportunity to improve a holograph writ than a bill, which, for ordinary, has no other atteſtation, but the ſimple ſigning of the debtor's name.