

SECT. XIII.

Private Banking Company.

1761. December 17.

ARCHIBALD TROTTER, *against* Messrs. MURDOCH, COCHRANE, and Co. Bankers in Glasgow.

ARCHIBALD TROTTER brought an action against Messrs. Cochrane and Murdoch, and the other proprietors of one of the Glasgow banks, setting forth, That he had applied to the bank for payment of above three thousand pounds Sterling of their notes: That they had offered him payment in sixpences; but, in making payment, their servants had proceeded in a way designedly evasive and slow: That they had miscounted the money, on purpose to have a pretence for counting it over again; had quitted him, in order to pay other people, and, by many other arts, had protracted his payments; on which account he had taken a protest against them; and he concluded for payment of the sum, with interest, from the date of the protests, costs of suit, and damages.

The defence pleaded for the banking-company was, That Trotter was sent to, and settled at Glasgow, by the directors of the two public banks at Edinburgh, as their agent, in order to pick up the defenders' notes, and then to make sudden runs upon them, in order to ruin their credit: That, in such a case, it was their right to defend themselves, by every legal method, against so invidious an attack: That payment in sixpences was a legal tender: That they were not obliged to keep all their servants employed in making payments to him only; and that therefore they could not be liable for any thing further than payment of the notes.

2do, Supposing there had been an absolute refusal to pay, they could not be liable for damages: because, being only a private banking-company, though thirty in number, they were in the case of any private debtor by bill or note, who, if he refuses payment, can only be sued for the debt, interest, and expenses, but not for damages.

“The Lords found the action relevant for payment of the principal sum, interest, and expenses of process.”

N. B. As the defenders did not reclaim against this interlocutor, it became final *quoad* the pursuer's demand for interest and costs of suit: But, the pursuer having reclaimed, and insisted for damages, the Lords ordered his petition to be answered. This point, however, never came to a discussion, and the suit was carried out of the Court by a submission.

Adv. Ferguson, Lockhart, Garden. Adv. Advocatus Montgomery, John Dalrymple.

Fol. Dic. v. 4. p. 291. Fac. Coll. 70. p. 160.

No. 38.

Private banking-company, not paying their notes, liable for interest and costs of suit. Whether liable for damages?