

No 155.

for the contents of the bill. *Vid.* Telfal and Lee *versus* Lewis, vol. 1. of Lord Raymond's Reports, p. 743. where it is laid down in express words, That, if the indorsee of a bill accepts but twopence from the acceptor, he can never after resort to the drawer. And this authority directly applies to the present case, which has been, in several instances, already adjudged to concern English debts, and consequently must be governed by the laws of that country, where both Captain Wilson and the Earl resided at the time, and where the debts were contracted.

That, besides all this, Messrs Innes and Clark, the pursuers' correspondents, got from Captain Wilson, a bill on Lord Cranston, for payment of this very debt; and they must be presumed to have got payment out of that separate fund. But whether they did or not, they could not lawfully return that bill to Captain Wilson, if they meant to preserve their recourse against the Earl.

For supposing the Messrs Fairholms had recurred against the Earl himself, they must have assigned him to Lord Cranston's bill, which they had got for security and payment of Captain Wilson's acceptance; but, if the Earl himself would have been entitled to demand an assignment to Lord Cranston's bill, the defenders, as assignees to Lord Rothes's bonds, must *a fortiori* be entitled to demand the like assignment to Lord Cranston's bill: But, as the pursuers had disabled themselves to grant such assignment, by the re-delivery of that bill to Captain Wilson, this, of itself, is sufficient to bar the recourse.

THE LORDS 'adhered to the Lord Ordinary's interlocutor, and refused the petition in respect of the answers.'

Aa. *Ferguson.*Alt. *Lockhart.**Fol. Dic. v. 3. p. 89. Fac. Col. No 41. p. 86.*

1762. February 16.

SIR JAMES MURRAY, Bart. Receiver-General of his Majesty's Customs, *against*
JAMES GROSSET, Merchant in London.

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Found in opposition to No 150. p. 1582. that bills indorsed in security require due negotiation.

WALTER GROSSET, collector of the customs at Alloa, transmitted to the Receiver-General an acceptance of James Drummond, of 6th November 1747, for L. 205 : 6s. desiring, by the letter which inclosed it, that it should 'lie as a deposit till applied.' Mr Grosset some time after, before that bill became due, desired Mr. Clephan, the Deputy Receiver-General, to pay a sum which exceeded the sum at the time in his hands belonging to Grosset by L. 92 : 3 : 9½; consequently he advanced that sum, it might be said, on the faith of Drummond's acceptance not yet due. When this bill became due, Clephan did not protest for non-payment, but allowed it to lie over, without diligence of any kind, or any notification to Grosset for several months. Drummond turned out to be entirely bankrupt; and it was alleged he had been so even before he granted the acceptance. Grosset's indorsation of it, bore 'for value, being his Majesty's

' money ;' and Mr Clephan obtained a writ of extent against Drummond's effects, but which produced nothing. In an action in the Court of Session, involving the question of recourse, Clephan *pleaded*, That holding the bill not for value, but only in security, or as a deposit, he was not bound to strict negotiation ; and that, beside, Groffet knew Drummond's situation all the time, and had been verbally informed the bill had not been retired.

Groffet *pleaded*, That the practice of remitting to the Receiver-General, by bills of exchange, was usual and legitimate ; and that Clephan had allowed the bill to lie over, in order to derive advantage by the interest growing on it.

Groffet died during the dependence ; and his representative was made a party.

The COURT of SESSION found that Clephan was not liable for the amount of Drummond's bill :—But the case went to appeal ; and the HOUSE of LORDS, 17th March 1763, " ORDERED and ADJUDGED, That the interlocutors complained of in the said appeal be, and the same are, hereby reversed ; and it is further ordered, that the respondent is liable to the appellant, as representative of his father deceased, for the sum of L. 205 : 6s. lost by the insolvency of James Drummond, the acceptor of the bill of exchange in question in this cause ; but is not liable to any interest on account thereof."

For the Appellant, *C. York, At. Wedderburn.* For the Respondent, *Thos. Miller, At. Forrester.*

Fol. Dic. v. 3. p. 89. Appealed Cases in Advocates' Library.

1764. November 14. STEVENSON against STEWART and LEAN.

A BILL was found regularly protested in London, though the notary was not present. His clerk presented the bill for payment, and returned with the answer to his master ; who extended the protest at home ; and inserted the names of two witnesses as being present ; this being according to the form and practice of London. See The particulars, No 103. p. 1518.

Fol. Dic. v. 3. p. 90.

1766. June 17.

MESSRS CHARLES and ROBERT FALLS, Merchants in Dunbar, Chargers, against ALEXANDER PORTERFIELD of Fulwood, Merchant in Glasgow, Suspender.

TEN pieces of Madeira wine, the property of Mr Porterfield, were, at Charlestown South Carolina, shipped on board the Black Prince, a ship of the Messrs Falls, bound to Dunbar, and consigned to the care of the Messrs Falls. The vessel arrived at Dunbar 1st April 1764, which the Messrs Falls, by a letter of 3d April, notified to Mr Porterfield, and desired to know to whom they should apply, at Edinburgh, for payment of the freight, duty, and other charges, of the

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A bill payable at three days sight, was allowed to lie some time in the hands of the drawee, neither accepted