

No 159. Mitchell, upon whom the bill was drawn, as well as Mitchell the drawer, had stopped payment.

In *answer* thereto, it was stated, that the bill falling due on the 14th April, Bedford, then in London, thought not worth his while to call for so small a sum, till the 17th, which was the last day of grace, when he was informed that Mitchell of London had failed on the 13th, the day before the bill fell due; but that, though it had been otherwise, he had not been, for a considerable time before, possessed of any of the effects of Mitchell of Aberdeen; that no protest could be taken, either for non-payment, or even for non-acceptance, till the last of the three days of grace, being the 17th, when the bill was actually presented, and when a protest might perhaps have been necessary to found Mr Bedford in his recourse against Ewen, by summary diligence; but that, under the particular circumstances of this case, a protest would have been of no avail to Ewen, in recovering the contents of the bill, either from Mitchell of Aberdeen, or Mitchell of London.

THE LORD ORDINARY, in respect the suspender did not offer to prove that the person, on whom the bill was drawn, had value of the drawer in his hands, found the letters orderly proceeded, reserving to the suspender his recourse against the drawer of the bill.

Ewen reclaimed, *contending*, that, by the universal practice of merchants, it is understood that no recourse is due upon a bill improperly negotiated, whether the person drawn upon was debtor to the drawer or not. Conformably whereto, it had been decided, in many instances, particularly Hart, No 148. p 1580.; and Tod, No 151. p. 1583. *2dly*, That the burden of a proof could not be laid on him. And the Court being clearly of opinion, that, in the question of recourse, there was a just distinction between the case of the drawer, and that of an onerous indorsee, the latter of whom was materially interested, that the bill, in all events, should be properly negotiated, and was not bound to submit to such investigations as the interlocutor pointed at;

'THE LORDS sustained the reasons of suspension *quoad* the L. 15 bill, and gave the expence of process.'

Act. W. M'Kenzie.

Alt. Buchan Hepburn.

Clerk, Kirkpatrick.

Fol. Dic. v. 3. p. 84. Fac. Col. No 53. p. 136.

1774. February 4.

JOHN REYNOLDS, Merchant in London, *against* JAMES SYME, and JOHN WEMYSS and SON, Merchants in Dundee.

No 160.

A bill drawn from Scotland upon England, is

THE defender, James Syme of Dundee, on the 20th day of January 1772, drew a bill on Alexander M'Roberts, merchants in London, in favour of the other defenders, Wemyss and Son, also of Dundee, for L. 100 Sterling, payable

two months after date. This bill being accepted, was indorsed by Wemyss and Son, and sent by them to John Auld merchant in Glasgow, who transmitted the same as cash to John Reynolds of London.

M'Roberts the acceptor, having become bankrupt, the bill was, of date the 23d March 1772, duly protested by Reynolds, who, on the fifth day thereafter, viz. on 28th March 1772, returned the bill on John Wemyss and Son, the indorsers, acquainting them of the dishonour.

Reynolds being refused payment, brought an action for recourse against the drawer and indorsers. The plea stated for the defenders was, that no recourse lay against them, as the bill was a foreign bill, and no notice was sent of the dishonour till the fifth post thereafter: That bills of exchange, drawn in Scotland, and payable in England, or drawn in England, and payable in Scotland, are, and always have been held, both in law and in business, to be foreign bills, subject to their rules, and entitled to their privileges, no less than those drawn between Scotland, and any country lying beyond the seas, or belonging to another supreme power: That inland bills are opposed to foreign ones; and, as the former are universally described to be those 'which are both drawn and payable in Scotland,' the latter are no less generally understood to mean, 'such as are drawn in Scotland, and payable in another country; or drawn in another country, and payable in Scotland:' Which definitions are agreeable to the express words of statutes, to the unanimous opinions of lawyers, and to the established practice, as well as ideas of merchants, act 1681, c. 20.; 1696, c. 36.; the English statute, 9no et 10mo, Will. III. c. 17.; Sir George M'Kenzie's Observ. on the statute 1681; Erskine's Inst. b. 3. tit. 2. § 35.—Pr. b. 3. tit. *. § 17.; Blackstone, b. 2. c. 30.; and Cuninghams Law of Bills of Exchange, § 4.

THE COURT pronounced the following judgment: 'In respect that, by the practice of merchants, not denied by the pursuer, the dishonour of bills drawn from Scotland upon England, is in use to be notified within three posts after the dishonour; therefore find, That the dishonour of the bill in question was not duly notified, and that no recourse lies thereupon; sustain the defences; affoizle the defenders; and decern.'

Agt. *W. Nairn.*

Alt. *Geo. Wallace.*

Clerk, *Tait.*

Fol. Dic. v. 3. p. 85. Fac. Col. No 105. p. 280.

1774. December 20.

THISTLE BANK in Glasgow, against HUGH M'KAY, of Bowmore in Ilay.

M'KAY, a considerable drover or dealer in cattle, who had, for a number of years, employed James Campbell, fadler in Glasgow, as his correspondent and banker, drew a bill for L. 50 Sterling upon the now deceased John Gillies of Douchra, dated 25th May, and payable 1st December 1770, at the shop of the

* The reference is exactly copied from the original report. The Session Papers are not in the Advocates' Library.

No 160.
accounted a
foreign bill, as
to the time
limited for
notification
of its dishon-
our.

No 161.
The drawer
of an accept-
ed bill, trans-
mitting it,
without in-
dorsation, to