

lieve him; but when, further, the defender is seen acknowledging, that he did put this into Mr Campbell's hands, in order that he might convert it into cash; when, at an after clearing of accounts with Mr Campbell, this bill is stated in the doquetted account of date 1st June 1772, though not payable till 1st December; so that the defender takes credit for the sum of this bill, as so much cash paid to Mr Campbell at the time of its being transmitted; when, recently before this clearance, the defender is apprised that cash had been got for this bill, by discounting it with the pursuers, and that they had inteded process against him for recourse; and when he, upon this, takes credit for this bill from Mr Campbell, and allows a decree for recourse to go against himself at the instance of the pursuers; it is impossible, from all these circumstances, to draw any conclusion, other than that the defender was conscious that his conduct, with respect to this bill, was in all respects equivalent to an actual indorsation, and that the pursuers had a just claim against him for recourse. At the same time, the pursuers must observe, that the distinction which the defender would here establish, between the effect of an assignation and an indorsation of a bill, is by no means well founded in law. They have precisely the same effect; (*vide* Erskine, p. 438. § 31.; No 102. p. 1515.) wherefore, the admission made by the defender, of the circumstances arising in this case being tantamount to an assignation of this bill by him to Mr Campbell, is all that the pursuers have occasion to contend for, in order to establish their recourse against the defender. And, indeed, the defender's error in this particular proceeds from a misapprehension of the principles on which questions of this kind fall to be decided. *Vide* Forbes on Bills of Exchange, p. 23. and 24.; Cuninghame on Bills of Exchange, p. 26.—105.

THE COURT adhered to the Lord Ordinary's interlocutor, which 'repelled the reasons of suspension, and found the letters orderly proceeded.'

A. W. Baillie.

Alt. J. Boswell.

Clerk, Tait.

Fol. Dic. v. 3. p. 90. Fac. Col. No 145. p. 378.

1775. June 21. JAMES COULTER against ROBERT MARTIN.

A BILL was drawn by Robert Martin, 20th December 1764, upon, and accepted by George Kellar, for L. 194 : 17 : 6, payable to the drawer four months after date. It was indorsed for value by Martin to Thomas Johnston, and by him indorsed for value to David Nisbet; in whose hands it remained when it became due, 20th and 23d April 1765. Kellar the acceptor having become notour bankrupt about the middle of February 1765, immediately thereafter fled from Scotland; and Mr Coulter having come lately to have right to this bill, as creditor to David Nisbet,

In a question of recourse between him and Martin, the drawer and indorser, the latter *objected* to the due negotiation of the bill, in respect there was no proof of the notification of its dishonour.

No 161.

No 162.

Evidence of due notification of the dishonour having been given, so as to subject the drawer in recourse, was inferred from his own posterior deed, importing an acknowledgement of his being debtor in the sum, among others, to the holder.

No 162.

Answered, 1mo, The objector has acknowledged himself debtor to Nisbet for the contents of the bill in question; *2do*, That the actual notification of the dishonour is to be presumed; and, *3tio*, That the notoriety of the acceptor's bankruptcy before the bill became due, was equivalent to an actual notification, and excluded the supposition of any damage having arisen from the want of it.

The Court went upon the particular circumstances in this case. Accordingly, "Having considered the disposition by the objector, Martin, to David Nisbet, and the other trustees for his, Martin's, creditors, wherein he acknowledges that he is owing to the said David Nisbet the sum of L. 514 : 17 : 6 Sterling; and that it is not denied by his procurators that the sum in the bill in question is therein included, Find sufficient evidence that the dishonour of the said bill was properly intimated to Robert Martin; therefore decern against him for the sums, principal and interest, contained in the bill libelled on."

The trust disposition by Martin to Nisbet, bearing in general that Nisbet was a creditor in L. 514 : 17 : 6, it was argued, contained a clause, that the stating of the debts as claimed by the creditors themselves, was without prejudice to all competent objections that might be made to any of them; therefore it was entire to Martin himself. But this, it was observed, was no more than a clause of file, generally thrown in, in all such deeds.

A. & Cullen.

Alt. B. W. M'Leod.

Clerk, Gibson.

Fac. Col. No 174. p. 90.

1775. August 5.

ALEXANDER ELLIOT against HENRY RICHMOND and JOHN POLLOCK.

No 163.

Found, that by the act 12. Geo. III. cap. 72. summary diligence cannot proceed by horning against drawers and indorsers of bills within the three days of grace.

No horning could proceed summarily against any person upon a bill, previous to the act 1681, c. 20. This act statutes and ordains, 'That, in case of any foreign bill of exchange, from or to this realm, duly protested for not acceptance or for not payment, the said protest having the bill of exchange prefixed, shall be registrable within six months after the date of the said bill, in case of non-acceptance, or after the falling due thereof, in case of non-payment, in the books of Council and Session, or other competent judicatories, at the instance of the person to whom the same is made payable, or his order, either against the drawer or indorser, in case of a protest for non-acceptance, or against the acceptor, in case of a protest for non-payment, to the effect it may have the authority of the judges thereof interponed thereto, that letters of horning, upon a simple charge of six days, and executorial necessary, may pass thereupon for the whole sums contained in the bill, as well exchange as principal, &c.

Upon this footing did our law stand down to the act 1696, c. 36. the words of which are: 'Statutes, enacts, and declares, That the same execution shall be