

Answered for the charger: That, though he was freighter, yet the said Mr Blair was proprietor of the goods; and, by bills of loading, the goods were to be delivered at Rotterdam to him or his order, (he paying the freight and average conform to the custom of sea); and seeing the skipper had delivered out the goods to Mr Blair's order at Rotterdam, *sibi imputet*, who might and ought to have retained them till he was paid.

Replied for the suspender: That the bill of loading bears, that the goods were all shipped by the charger, and by his order to be delivered to Mr Blair, or his order, at Rotterdam; and that the clause in the bill of loading (he or they paying freight and average) was but an additional security to the ship-master for the same; but did not innovate or annul the charter-party; neither was it the practice (and it would be destructive to trade if it were always so) to the master to plead the right of hypothec, and not return the goods till paid, when he is sufficiently secured by charter-party.

THE LORDS found, That the charger could not have recourse against the drawer of the bill charged on.

Act, Abercromby.

Alt. Jo. Ogilvie.

Clerk, Robertson.

Bruce, No 51. p. 69.

1785. July 27.

JAMES GOODFELLOW against ANDREW MADDER.

MADDER was charged with horning, at the instance of Goodfellow, for payment of a bill of exchange which had been accepted by him. He presented a bill of suspension, on this ground, that he had been fraudulently induced to admit his subscription to the acceptance, without full value, and he insisted for the charger's being judicially examined; urging, that, in this manner, he would have an opportunity, if the charger should advance what was not true, to disprove it, and so to invalidate his claim.

Observed on the Bench: Where circumstances of fraud are relevantly stated against the holder of a bill of exchange, and a proof offered, such a previous examination as is here required might be highly expedient, both for superseding the necessity of farther evidence, and for the better investigation of the truth. But to allow that method of proceeding, in consequence of general allegations like the present, would tend in a great measure to obstruct that free currency of bills of exchange, which is so essential to trade.

THE LORD ORDINARY found the letters orderly proceeded. And his judgment was affirmed by the Court, after advising a reclaiming petition for the suspender, with answers for the charger.

Lord Ordinary, Monboddo.
Craigie.

Act, H. Erskine.

Alt. Dalzell.

Clerk, Home.

Fol. Dic. v. 3. p. 78. Fac. Col. No 227. p. 353.

No 73.

No 74.

The acceptor of a bill alleged he had been fraudulently induced to admit his subscription. His allegation was only general, not of particular facts, and circumstances. He insisted for a judicial examination of the holder of the bill, which was refused.