

No 105.

*Pleaded* for Burnet : That he ought to be allowed deduction of certain partial payments made to Gray, which, though not marked on the bill, are vouched by missives and receipts.

It appears, from the expressions used in the title and docquet of the inventory, that the bills were only lodged with Ritchie for security, not in payment of his acceptance to Dingwall Fordyce.

The nature of the transaction likewise implies it : Whether there is an overplus or a shortcoming, the parties being respectively obliged to account to each other for the balance.

*Answered* for the charger : It is evident from the transaction, that the money advanced to Gray was the money of Ritchie, and others, who borrowed it on their own credit. Gray never gave acceptance to Dingwall Fordyce for this money. The bills, therefore, were indorsed for payment of value instantly received from Ritchie and others. To the extent of that value, and until it is paid, they are onerous indorseees in these bills, and not obliged to admit any payments not marked on the bills.

The stipulations in the docquet do not aid the suspender's plea. After the value given for the bills is recovered, the charger, and others, no doubt, would only be indorseees in trust as to any balance, and accountable to Gray for the surplus, if recovered. This is the import of the docquet, which affects not the onerosity of the indorsation to the extent of the value given.

It was said, that such transactions as this are common among merchants ; and the indorseees always understood, in practice, to be onerous until the value is paid.

After the Court had pronounced two consecutive judgments in favour of the chargers, it was discovered that Gray had indorsed to Ritchie, a few days after the first indorsation, bills to the amount of L. 355, for the purpose of answering partial payments made on the former bills, not marked on them, but vouched by separate documents. Upon which the Court pronounced this judgment,

' THE LORDS adhere to their former interlocutor, finding, that the charger, in consequence of the transaction 10th January 1776, was an onerous indorseee to the bills in question ; but find, that, as the transaction was explained by the second list of bills indorsed to the charger, he is bound to admit the partial payments made by the suspender.'

For Burnet, *Ad. Rolland.*

*Alt. Neil Ferguson.*

*Fol. Dic. v. 3. p. 82. Fac. Col. No II. p. 23.*

No 106.

A proof allowed, that an indorsation of a bill had been fraudulently devised.

1785. July 27.

JOSEPH CORRIE, *against* JAMES AITKEN, and Others.

JOSEPH CORRIE sued James Aitken and others, for payment of a bill of exchange, which had been accepted by them in favour of Ninian Steel, and by him indorsed to the pursuer.

The defenders *contended*, That the indorstation had been fraudulently devised between the drawer and indorsee, in order to preclude their just defences; and they offered a proof of facts, sufficient to shew that this was the case.

*Observed* on the Bench: Though bills of exchange, when in the possession of fair and onerous indorsees, are, like bags of money, liable to no exception arising from the fraud of anterior holders; a collusive transference, such as is here alleged, ought not to be attended with the same privileges.

THE LORDS UNANIMOUSLY allowed the proof here offered.

Lord Ordinary, *Brasfield* A& *Honyman* Alt. *H. Erskine, John Erskine.* Clerk, *Colquhoun-Craigie.* *Fol. Dic. v. 3. p. 83. Fac. Col. No 226. p. 353.*

No 106.

ed between the drawer and indorsee, in order to preclude the acceptor's defences.

1786. November 29.

GAVIN HOGG *against* JOHN FRASER.

GAVIN HOGG, in consequence of an order from Simon Frazer, merchant in Inverness, drew bills for L. 154, on Mr John Frazer, who refused to accept, because the sums in his hands, belonging to Simon Frazer, amounted only to L. 55 : 7 : 2. But he offered, for the accommodation of his correspondent, to honour a bill of exchange for L. 100; which, however, he was not required to do.

Mr Hogg took no farther measures for thirteen months. By this time Simon Frazer had become insolvent, after Mr John Frazer had interposed his credit for him to a considerable amount. An action was then brought by Gavin Hogg, in which, in order to subject Mr Frazer to the payment of L. 55 : 7 : 2, it was

*Pleaded*: The drawing of a bill of exchange, or, what is the same thing, the giving authority to make such a draught, is equal to an irrevocable assignment of those effects of the drawer, which are at the time in the hands of the drawee. *Erskine*, book 3. tit. 2. § 29.

*Answered*: If the pursuer had, within a reasonable time, limited his demand to the sums acknowledged to be due by the drawee, his present claim might have been deemed a just one. But it would be attended with the most pernicious consequences, if, by such unfinished transactions as here occurred, any restraint could be introduced on the freedom of commercial dealings.

‘THE LORDS sustained the defences, and found the pursuer liable in expences.’

Lord Ordinary, *Hales.* A& *N. Fergusson.* Alt. *Honyman.* Clerk, *Orme.* *Craigie.* *Fac. Col. No 296. p. 455.*

No 107.

A person was drawn upon for a larger sum than he had in his hands. He refused acceptance. Several months after, the sum which had been in his hands was claimed, at the instance of the holder of the refused bill. The sum was found not to have been attached by him.

1787. December 6.

THOMAS WIGHTMAN *against* DAVID GRAHAM.

ROBERT BURGESS paid a sum of money which was due by his father, and afterwards obtained from David Graham, the creditor, an assignation of the debt with warrandice from fact and deed.

No 108.

The exception of *violence* arising from legal concurs-