has been uniformly the decision of the English courts. Hawkin's Pleas of the Crown, 247. § 14. No. 42.

Replied: In Atkins' Reports, 3. 154. Adlington *versus* Carr and Andrews, 3d July, 1744, the opinion of Lord Chancellor Hardwicke to the contrary is stated.

The Lord Ordinary at first pronounced the following judgment: "Finds no sufficient cause for applying the penal statutes against usury in this case; but finds sufficient ground in law and equity for reducing and restricting the pursuer's claim to the original principal sum and annual-rent, without any accumulations."

His Lordship having afterwards reported the cause, the Court in effect adopted the same interlocutor by the following:

"The Lords repel the defences pleaded against payment of the bond pursued for; and find, that no action can lie upon the bill, in respect the same was in part made up of undue exactions; and that the pursuer's claim must be restricted to the principal sum contained in the bond, and annual-rent thereof."

Reporter, *Lord Gardenston.* Act. *Dean of Faculty.* Alt. *M. Ross.* Clerk, *Home.*

S. *Fac. Coll. No.* 114. *p.* 215.

1790. *June* 30.

WILLIAM GLEN *against* The CREDITORS of WILLIAM MACALPINE.

No. 43.
An obligation to pay more than the ordinary rate of interest, legal, where an unusual risk is run.

In April 1785, Macalpine, the owner of a small coasting vessel, having received £.175 in loan from Glen, conveyed to him the property of the half of his vessel. He also became bound to pay interest at the rate of 10 *per cent.* Mr. Glen being excluded from the profits arising from the ship.

Both parties were authorised, after giving two months notice, to withdraw from the bargain, which was also to cease at the death of Macalpine, or on his selling the vessel. It was farther provided, that if the vessel was lost, the creditor was to have no claim for the sums advanced; but in case of salvage, he was to have a rateable interest in the articles saved.

At the desire of Macalpine, Glen procured insurance on the vessel to the amount of £.300. Afterwards, on its being lost, Macalpine having become bankrupt, a competition for the insured sums arose between Glen and the other creditors; who, in an action brought in the Admiralty Court, which was afterwards transferred to the Court of Session, called in question the legality of the above-mentioned agreement, and

Pleaded: In contracts of bottomry or at *respondentia*, where the creditor betakes himself to the security of a ship, or the goods on board of it, during a particular voyage, it is permitted to take more than the usual rate of interest, the extraordinary premium being accurately proportioned to the particular risk. But the agreement in question was very different. The right of the lender was not of the nature of a security, but a vendition, the property of one half of the vessel having

No. 43. been directly conveyed. The same exorbitant recompence for the use of the money might have been demanded, although the vessel had remained in harbour till the loan was at an end. The creditor too, after two months notice, might have withdrawn himself from the hazard of loss; and he was also entitled to the benefit of salvage, which a creditor by bottomry, or at *respondentia*, never is. Such an agreement seems to be quite anomalous, and indeed a mere cover for an usurious loan; Park on Insurances, p. 468, 475, 483, 499.

Answered: The agreement between the parties, though not precisely the same with those which generally go under the name of bottomry or *respondentia* contracts, is a fair and equitable one, the risk undertaken by the creditor being much greater than in ordinary cases. It is truly a peculiar species of bottomry, adapted to the circumstances of a coasting trade; and although in general a creditor at *respondentia*, or by bottomry, is not entitled to salvage, this may be otherwise regulated by special agreement. In the case of money lent on vessels or merchandise going to or from the East Indies, it has been provided by statute, that the lender shall have this benefit; 19th Geo. II. Cap. 37.

It appeared, that a claim had been entered in behalf of Mr. Glen for the whole premium paid by him to the underwriters, which was also founded on for showing the illegality of the bargain; but as it had arisen from the inaccuracy of the Procurator in the Admiralty-court, no regard was paid to it.

It was also stated, that the policy of insurance, as having been obtained without any specification of Mr. Glen's interest, was therefore ineffectual, agreeably to the decision Glover *versus* Black, reported by Burrow, Vol. 3. p. 1394. But as no objection was made by the underwriters, the information given to them by the broker having been sufficiently explicit, this circumstance was likewise disregarded.

The question being reported on informations,

The Lords preferred Mr. Glen to one half of the insured sum, and to the premium paid by him for insuring that part of the vessel which was at the risk of William Macalpine.

Reporter, *Lord Eskgrove.* Act. *Macormick.* Alt. *Wight.* Clerk, *Home.*

C. *Fac. Coll. No.* 143. *p.* 284.

1797. *June* 6.

ROBERT PLAYFAIR, *against* RICHARD HOTCHKIS, Trustee on the Sequestrated Estate of BERTRAM, GARDNER, and Company.

No. 44.
Private bankers may charge commission on sums advanced by them on a cash-

Alexander Simpson held a cash-credit in the books of Bertram, Gardner, and Company, bankers in Edinburgh; and in the year 1791 there was a balance of upwards of £.800 due by him.

In the year 1792, Simpson applied for a further advance of £.200, which being refused, unless security was found for that sum, and also for £.200 of the balance,