

1803. May 28.

CAMPBELL THOMSON and COMPANY, *against* GLASS and SON.

JOHN KING, carpenter in Stirling, was employed by contract to execute the timber work of a house for Robert Young. The house was to be finished on 1st May, when he was to receive payment. John Glass and Son, wood-merchants, supplied King with the necessary timber, and obtained from him two bills, dated 25th February and 25th March 1800, on Young, payable 1st May. These bills being presented to Young, he declined accepting them, and they were regularly protested for non-acceptance on 24th and 25th March.

King was indebted to Campbell Thomson and Company, bankers, by bills, to the extent of £497, and on 10th October, they used arrestments in Young's hands; on which account, when the house was finished in the middle of November, and its price was then payable, Young raised a multiple-pounding.

It was admitted, that a bill protested for non-acceptance was equivalent to an intimated assignation, and would consequently in the common case be preferable to a posterior arrestment in the hands of the drawer. But then it was contended in favour of the arresting creditors, that neither at the time of drawing nor of protesting these bills, was there any money due to the drawer in the hands of the drawee; but that the money was only to be paid when the house was completed, which had not then, and which might never have happened; so that it was a contingent event, whether it would ever be due or not; and that the value could not be competently assigned by the draught of a bill not accepted.

The Court, however, listened to the doctrine urged by the holder of the bill, that the drawer had value in his hands long before the time of using the arrestments; as the bills were granted for the timber furnished for the house, which was all used and built into it; and as soon as it was thus incorporated in the house, a sum of money became due: A debt was actually constituted as much as if specie had been deposited; and though the *jus exigendi* might not be competent for some time longer, and payment might be postponed or suspended till some other event, still such a debt subsisted as could be transferred or assigned, as effectually as any other claim; for it was not a mere contingent debt, but was a vested and indefeasible right; as the drawee must have been *lucratus* by the timber, to the amount of the fund *in medio*; and a bill of exchange is equivalent to a legal assignation of the sum when due, in favour of the holder of the bill.

The Court, accordingly, on advising a petition, with answers, adhered to the interlocutor of the Lord Ordinary on the bills, refusing an advocacy of the Sheriff of Stirlingshire's sentence, (7th January 1803), which "preferred Messrs.

No. 2.

A bill of exchange, which was protested for non acceptance, held to be a sufficient assignation of a debt not then payable, and preferred to a posterior arrestment.

- No. 2. “ John Glass and Son, *primo loco*, in respect of the balance in Mr Young’s
“ hands being carried by the intimated draughts of the common debtor, prior to
“ any arrestment being used.”

Lord Ordinary, *Cullen*. For Advocators, *Wolfe-Murray*. Agent, *Jo. Campbell*,
tertius, *W. S.* Alt. *Jeffrey*. Agent, *Geo. Napier*.

F. *Fac. Coll. No. 105. n. 232.*