

With respect to the argument founded on the act 1681, it will be remembered, that at an early period much jealousy was entertained by the Judges, both in England and Scotland, with regard to the extraordinary privileges of bills of exchange, and various difficulties occurred, which were all in process of time, removed; Holt's reports, p. 113. 1. Salkeld, 130. Trin. Tudhope against Turnbull, June 22, 1748, No. 100, p. 1510. The bill in the present case, although left blank in the name of the drawer, is possessed of all the essential requisites to constitute a debt. The acceptance imports the receipt of the money for which it was granted, and also an obligation to pay it. Wherever, therefore, a person accepts a bill which is blank in the name of the drawer, he becomes bound to pay the person who can show he has a right to the debt. It is of no consequence whether it has the drawer's name upon it, provided it can be clearly shown in whom the *jus exigendi* exists; February 8, 1785. Drummond against Creditors of Drummond; No. 47. p. 1445. Hare against Geddes, November 22, 1786, No. 48. p. 1446.

The bill of advocacy was passed; and the Lord Ordinary assqilzied the defender.

But the Court upon advising a petition, with answers, altered the interlocutor of his Lordship, and "repelled the defence founded on the plea, that the bill is not probative; find the defender liable in the expenses hitherto incurred; remit to the Lord Ordinary to ascertain the same, and to hear parties farther on the other points of the cause."

Lord Ordinary, Methven.
Alt. Erskiner

Act. Craigie.
Agent, Jo. Macglashan.

Agent, Alex. Duncan, W. S.
Clerk, Ferrier.

F.

Fac. Coll. No. 169. p. 382.

1805. June 5. HILL against MENZIES and ANDERSON'S TRUSTEE.

FRANCIS HILL, manufacturer in Malmsbury, having employed Menzies and Anderson as his agents in Scotland, became their creditor to a considerable amount. Among other bills which he received in order to discharge this debt, were five, drawn by them upon John Anderson in London. Upon being presented, they were accepted by him, and discounted by Mr. Hill. Before they became due, Menzies and Anderson stopped payment, which was notified to him by a circular letter, in the usual form. In consequence of their failure, the acceptor also failed, which event was also notified to Mr. Hill, who was, at the same time informed, that no money had been put into the acceptor's hands, and that therefore they could not be retired when due. Mr. Hill was accordingly obliged to retire them himself, and entered a claim upon the sequestrated estate of Menzies and Anderson for their amount.

Upon the part of the trustee it was objected, that recourse was lost against

No. 17.

No. 18.

When the drawer has no funds in the hands of the acceptor, the indorsee need not protest it for non-payment, in order to preserve his recourse against the drawer.

No. 18. the drawer, because the bills had not been duly negotiated, not having been protested for several months after they fell due. In support of this objection, it was

Pleaded: Every bill constitutes a contract, whence reciprocal obligations arise. The holder of the bill, on his part, becomes bound in due time to present the same for acceptance; and, in case of dishonour, either by non-acceptance or non-payment, he is bound to protest the bill, and to notify the dishonour thereof, without any improper delay. In this way, his recourse is preserved against the drawer of the bill; but a neglect in any of these particulars, makes him forfeit this right: It is the acceptor and not the drawer who is the primary debtor. By not negotiating the law holds that he has relied entirely upon the acceptor, who, by his acceptance, has come under an obligation to pay the bills, whether he is possessed of effects of the drawer or not; Hart against Glasford, 21st June 1755, No. 148. p. 1580. Fairholms against Sun Fire Office, 23d June 1761, No. 155. p. 1588. Fergusson and Company against Belch, 17th June 1803, No. 13. *supra*.

Answered: Where a bill is accepted by a person, without being possessed of funds of the drawer when it becomes payable, when this bill is dishonoured, it is unnecessary for the indorsee to protest it, in order to preserve his recourse against the drawer, because no injury can arise from the omission of this ceremony, as the drawer must have been aware that this would be its fate. It is not even necessary to give any notice to him of the dishonour. This is the doctrine of the law of England; Cook's Bankrupt Law, p. 167. Bailey on Bills of Exchange, p. 17. Tindal v. Brown, 1. Term. Rep. p. 167. It is also the law of Scotland; Macalpine and Co. against Parsons, 21st January 1792, No. 176, p. 1617. The case is very different when the question is with an indorser; for he is, on all occasions, entitled to insist upon strict negotiation, as he has no concern whatever with the accounts between the drawer and the drawee.

The Court repelled the objection, and remitted the trustee to rank the debt.

In the case of Fergusson and Company, Belch was only an indorser, which distinguishes it from the present case.

For Petitioner, *Wolf-Murray*.
Agent, *C. Bremner*, W. S.

Agent, *Ja. Little*, W. S.

Alt. *Baird*.

F.

Fac. Coll. No. 211. p. 471.

1806. *November 18.*

FREER and ANOTHER against RICHARDSON and COMPANY.

No. 19.
A bill being
protested at
the instance of
the drawer,

JOHN DUNCAN, wright in Perth, and *David Gordon* at Mill of Cairnie, granted (17th April 1801) a joint bill to *Jean Duncan*, for £14. 10s. at one month's date.