

SECT. II.

Negotiation of Bill.

1629. July 24.

LINDSAY *against* GRAY.

ONE being obliged to deliver to another a sum of money in London; and the party obliged, alleging, that he had sent a letter of exchange to his factor, resident at London, to do the same; this letter of exchange not being answered, neither yet protested against by the creditor; it was found did not liberate the debtor, but that nevertheless he ought to make payment to the creditor.

Clerk, *Gibson*.*Durie, p. 467.*

No 123.

1666. July 27.

E. NEWBURGH *against* STUART.

SIR WILLIAM STUART being creditor to the Earl of Newburgh, in a great sum, upon an indentment in the said Earl's lands: After his Majesty's Restoration, he was induced, (though there was no question as to the debt) to make a reference and submission to the Laird of Cochran and Sir John Fletcher; upon no other account, but that he apprehended that Newburgh might trouble him, and cause him be fined; which was the ordinary and ignoble practice of noblemen at that time against their creditors. These arbiters did take from the said Sir William, a discharge of the debt and renunciation of his right; and from Newburgh a blank bond as to the sum; and the said debt then amounting to 40,000 merks, they did give to the Earl of Newburgh the renunciation; and to Sir William, Newburgh's simple bond, filled up 6500 merks only: Newburgh pretending that Sir Alexander Durham (then Lord Lyon) was owing him money, did, by way of letter, give a precept to the Lord Lyon, in these terms: That he desired him to pay that sum to the bearer upon sight, and that he should retire his bond. This letter being presented to the Lyon, he, in a scornful and jeering way, subjoined to the letter, 'My Lord, I am your humble servant.' The Earl of Newburgh not satisfied to have paid Sir William in manner forefaid, as to 3400 merks, did intent a pursuit against Sir William, that he might be free of the residue, and get back his bond of 6500 merks, upon the pretence, that the said Sir William had got from him a bill of exchange, which had been accepted by the deceased Sir Alexander Durham; at the least, in case of not accepting, he should have protested and intimated to Newburgh, that it was not accepted nor satisfied, that he might have recourse against the said Sir Alexander, in his own time, whereof he is now prejudged.

No 124.
Found, that precepts upon factors, and such like, granted to creditors for their further security, need not be presented, protested, or intimated; as bills of exchange among merchants.
See No 131.
p. 1553.

No 124.

Upon a debate *in præsentia*, it was found, That the said letter was not a bill of exchange, but a precept; and that the receiving of such precepts upon Chamberlains and others, being for the creditors further security, do not oblige them to the formalities of presenting, protesting and intimating; which are in use in the matter of exchange and trade betwixt merchant and merchant.

Advocates, *Lockhart, Wallace*, contra *Wedderburn & Chalmers*.

Fol. Dic. v. 1. p. 100. Dirleton, No 37. p. 15.

No 125.

A person in Edinburgh bought a bill on London, payable to his correspondent at Bristol, who happened to be abroad; so that the bill was not regularly negotiated. Before his return, the drawee had become bankrupt. The porteur having been guilty of no neglect, did not lose his recourse against the drawer.

1676. June.

DOCTOR WALLAGE *contra* SYMSON.

A BILL of exchange being drawn by a merchant in Edinburgh, upon his correspondent at London, payable to a merchant at Bristol; the person, to whom the said bill was payable, was not in England for the time, but had gone to Ireland; but his friend having broken up the letter directed to him, and having found inclosed the said bill of exchange, did indorse the same to be paid to another person upon the place, who did accordingly present the said bill to the merchant on whom it was drawn, who did accept the same conditionally, when it should be right indorsed: And thereafter, the person to whom the said bill was payable, having duly indorsed the same to be paid, as the indorsation did bear; the merchant, upon whom the said bill was drawn, did in the interim break, before the bill so indorsed was presented to him; there having intervened betwixt the date of the bill, which was 2d January, and the right indorsement of the same, which was about the end of April, about four months; so that the question was, whether the drawer of the said bill should be liable to refund the sum therein-contained?

It was *alleged*, That he could not be liable, in respect the said bill was not returned to him protested, either for not acceptance or for not payment: And albeit in law, and by the custom of merchants, the drawer be liable unless the bill be paid; yet that is ever understood with a proviso, that diligence should be done, and protests should be taken, unless the person upon whom the bill had been drawn, had been evidently *not solvent* the time of drawing the said bill; which could not be alleged in this case, seeing the defender had drawn upon the same person after the said bill, to the value of L. 2000 Sterling, which had been answered; and had likewise answered bills of his, of great value; whereas, if the bill in question had been returned protested, he would have retained the provision he had in his hand, or done diligence, to recover the value of the said bill; or might have countermanded the said bill, and given another bill, payable to a person that was upon the place.

THE LORDS notwithstanding found, That the defender and drawer of the said bill should be liable; but some of the Lords were of another judgment: And the defender repined, and gave in a bill, desiring to be heard.

Fol. Dic. v. 1. p. 101. Dirleton, No 365. p. 179.