

No 7. THE LORDS found the libel and reply relevant and approven; and therefore decerned Torphichen to re-fund the fum.

Fol. Dic. v. 1. p. 105. Stair, v. 1. p. 56.

1708. January 29. FULTON against JOHNSTON.

No 8. THE possessor of a bill having raised a process of recourse against the drawer, and thereafter indorsed the bill; in a new process for recourse, at the indorsee's instance, his knowledge of the former process, which rendered the bill litigious, found relevant to subject him to the oath of the indorser.

Fol. Dic. v. 1. p. 105. Forbes, p. 233.

* * * See The particulars *voce* LITIGIOUS.

1728. June. M'AUL against LOGAN.

No 9.

An onerous indorsee, who knew, when he received the indorsation, that the fum had been arrested before the drawer's name was filled up, was obliged to give way to the arrestment.

IN a competition between Archibald M'Aul in Killofide, and Hugh Logan in Littlecreoch, M'Aul arrester, was preferred to Logan an indorsee; because, 'it consisted with the indorsee's knowledge, that the arrestment was laid on before the signing of the bill by the drawer.'

At the time the indorsation was taken, the indorsee, knowing of the arrestment, saw that the bill was not signed by the drawer, but then got him to add his subscription.

In a petition for the indorsee, it was *argued*, That there is no law or custom enjoining the drawer of a bill to sign at the time of acceptance, otherwise the bill shall be null. Neither can such consequence be founded on the reason of the thing, or the nature of the contract. It is the acceptance which constitutes the transaction. There is no obligation imposed on the drawer. A bill is not a contract between the drawer and the acceptor. If it be a contract at all, it is *ab una parte tantum obligatorius*, as *mutuum* or *stipulatio* in the civil law. In the case of a draught, the drawer often pays without at all subscribing. In that case, it may be the drawer who is the debtor, and the drawee will have recourse on him, although there is the name of but one of the parties on the bill. If the debtor in a bill sign it, it is good, whether he be drawer or acceptor. In this case, however, the drawer's name is in the body of the bill which ought to be held sufficient.

This bill is holograph, which does away any argument founded on the risk of forgery. In the case of the Kirk of Bogrie,* a bill was reduced accepted while blank in the drawer's name, not simply because it wanted the drawer's name, but because it fell under the act of Parliament against blank writs.

The drawer of the bill in question, by not having signed it, has transgressed no law. And the indorsee's knowledge, that there was an arrestment upon a

* Examine General List of Names.