

1710. February 10.

ALEXANDER MILN, Merchant in Montrose, *against* ALEXANDER ERSKINE,
Merchant there.

ALEXANDER MILN having charged Alexander Erskine for payment of a L. 29 Sterling bill, drawn by him upon Hary Scot, merchant in London, payable to the charger, and protested for not acceptance: He suspended upon this reason, that the charger could have no recourse against him as drawer of the bill; in regard the same had not been duly negotiated by the charger's intimating to him, with the first post, that the bill was not honoured by acceptance, which is a necessary step of diligence in the possessor of a bill; as Forbes observes, p. 97. (edit. 1703.) that the drawer may have opportunity to draw his effects out of the designed acceptor's hands, and beware of trusting him with more; for it is not to be imagined, that a merchant who finds himself not in a condition to answer his correspondent's bills, to the value of the effects in his hand, will be the first that will acquaint him of it; and the charger has been so unaccountably negligent, that he did not advertise the suspender concerning the fate of his bill, till five or six months after its date.

Answered for the charger: Suppose such timely advice were necessary to be given by the custom of other places, the 20th act of Parliament 1681, requires no more in the possessor of a bill, to entitle him to the benefit of summary diligence, than that it be protested, and the protest registered within six months. Besides, *2do*, The suspender suffered no prejudice through the want of advertisement, that his bill was protested; seeing Mr Scot did suddenly break after the protesting; and where a person claims damage through another's negligence, he must instruct and clear his damage.

Replied for the suspender: The act of Parliament 1681 being only intended to favour, with summary diligence, bills that are duly protested and registered within six months; it is grossly absurd to infer from thence, that the said statute doth dispense with any piece of diligence formerly incumbent on the possessor of a bill, to afford him recourse against the drawer; for, at that rate of arguing, the possessor of a bill might sufficiently exoner himself, by presenting it to the person drawn upon, any time within six months, though he might have done it within six days. *2do*, Albeit Mr Scot became bankrupt soon after the bill was drawn, yet several of his creditors, thereafter, recovered payment by a course of diligence; and the suspender might have been as forward, had he been timely advertised of the fate of his bill.

THE LORDS found, That the charger not having advised the drawer, that his bill was refused to be accepted, for the space of five or six months after protesting for not acceptance, he cannot recur against the drawer; and therefore suspended the letters *simpliciter*.

No 128.

The possessor of a bill protested for non-acceptance, was denied recourse, not having timely acquainted the drawer, and the person drawn upon having become bankrupt, in the *interim*, with the drawer's effects.

No 129.

Thereafter, upon a reclaiming bill offered by the charger, 21st February inst. the LORDS adhered; albeit it was *alleged*, That the noise of Scot's breaking came to the suspender's ears in a few days after protesting the bill; in respect he not being acquainted by the charger, that his bill was protested, had ground to believe it was paid. And, 28th instant, the LORDS again adhered; albeit the charger offered to prove, that within six weeks after the bill was protested, he acquainted the suspender thereof; for the concealing from him the fate of his bill during the space of six weeks, was thought as culpable, as if the advice had been delayed six months; especially considering, that Mr Scot did suddenly break about the time the bill was presented.

Fol. Dic. v. 1. p. 100. Forbes, p. 397.

1711. February 7.

No 130.

A bill was duly negotiated, and afterwards the porteur took assignation to an infestment in security of the debt in the bill. This did not bar his action of recourse, once established, by the due negotiation.

DAME ELIZABETH NICOLSON, *against* WILLIAM MORISON of Prestoungrange.

IN the action of recourse, at the instance of the Lady Nicolson, against Prestoungrange, for L. 2500 merks, contained in a bill of exchange, drawn by him on Mr William Rolland and Mr Robert Gordon, payable to her; which was accepted, and thereafter protested for not payment:—THE LORDS found it relevant to infer recourse against the drawer of the bill, that it was timeously protested for not payment against the acceptors, and the protesting intimated to the drawer; albeit the possessor did not intent any process of recourse against him till two or three years after her protesting the bill; and also took assignations from the acceptors, in security of the sums contained in the bill. *See Case between these parties, Div. 5. b. t.*

Fol. Dic. v. 1. p. 101. Forbes, p. 493.

* * * Fountainhall reports the same case:

WILLIAM MORISON of Prestoungrange being debtor to Dame Rachel Trotter, relict of Sir William Nicolson of that Ilk, he gives her a bill for 2500 merks on Gordon and Rolland, his two salt grieves, payable on the 11th June 1706. They both accept; but, failing to pay at the day, the Lady protests the bill for not payment, but forbears to registrate it till December thereafter, and does not charge them with horning till April 1707, and the denunciation is not till the 31st of October thereafter. The cause of this forbearance was, that the two acceptors offered security for the money, and gave an assignation to an infestment of annualrent above the sum in the bill; but these not proving ready effectual payment, and the two acceptors breaking, the Lady raises a process against Prestoungrange, the drawer, for making the bill good, and offers to communicate and transmit to him the rights she had got from them in security. *Alleged* for Prestoungrange, You cannot recur against me, because you have been negligent and remis in negotiating the bill; for though it was protested *debito tempore*, yet you