

DIVISION II.

The Porteur's Action against the Person upon whom the
Bill is Drawn.

S E C T. I.

Of Bills not Accepted.

1712. December 9.

JOHN GORDON, Merchant in Aberdeen, *against* WILLIAM ANDERSON, Merchant in Montrose.

No 79.
A person who suffered a bill drawn on him, to be protested for non-acceptance, found liable to the extent of the drawer's effects in his hands, and in *mala fide* to pay thereafter to the drawer.

IN a process, at the instance of John Gordon against William Anderson, for payment of L. 16: 10s. Sterling; contained in a bill drawn upon him by Samuel Chalmers, merchant in Leith, payable to the pursuer, and suffered to be protested for not acceptance:—THE LORDS found the defender liable to the pursuer for payment; so far as he had of the drawer's effects in his hand, at the protesting of the bill; which did sufficiently put him *in mala fide* to pay thereafter to the drawer; the bill being virtually an assignation to Chalmers's effects in Anderson's hand, effecting to the sum therein; and the protest equivalent to an intimation.

Fol. Dic. v. 1. p. 97. Forbes, p. 642.

1712. December 10.

ALEXANDER NAUGHTON, Factor in Rotterdam, *against* ANDREW RITCHIE, Merchant in Aberdeen.

No 80.
One of two co-partners accepted only for his own part. He ought to have accepted simply, and was found liable for the whole.

ANDREW RITCHIE, and Alexander Orem, Bailie in Aberdeen, being in co-partnership, and having commissioned Alexander Naughton to send them goods in company; for which they desired him, by their missive letters, to draw bills, and they would honour the same. He drew upon them a bill of L. 50 Sterling, payable to John Gordon, as per advice; which Bailie Orem accepted in the ordinary manner; but Ritchie adjected to his acceptance these words, *For my own half*. In a process for payment of this bill, at the instance of Provost Allardice, against Andrew Ritchie—THE LORDS found, That Ritchie (who produced no letters of advice) ought to have simply accepted the bill; and, therefore, is liable for the whole sum therein. *See* No 70. p. 1478.

Fol. Dic. v. 1. p. 98. Forbes, p. 642.