

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.

* * * The same case is reported by Dalrymple :

NAUGHTON draws a bill of L. 50 Sterling upon Orem and Ritchie, which Orem accepts simply, and Ritchie accepts for his half; Orem being insolvent, he insists against Ritchie for the whole sum in the bill; upon these reasons: *1mo*, The bill being drawn upon Orem and him, in the course of exchange, it was understood, that they should both be bound *in solidum*; and, if Ritchie had not been willing to accept, he might have suffered the bill to be protested; but seeing he did at all accept, he became simply bound; and there was no regard to be had to the adjected quality, which was unwarrantable. *2do*, Orem and he were in co-partnery, and wrote joint letters; whereof two were produced to Naughton, desiring him to afford them credit for the value of a cargo of wine, to be put aboard a ship then lying at Bourdeaux; and promising to honour his bills; and the bill bears *per advice*; and the letter of advice not being produced, the draught is presumed to be for re-imbursing his advance on the foresaid commision.

It was *answered*: The acceptor of a bill, with a quality, is only bound in the terms of his acceptance; and the presenter of a bill, if not willing to admit of the quality, may protest for not acceptance; but having made use of the bill, with a qualified acceptance, ought to hold himself content with the terms thereof; and the defender denied the co-partnery, or that he was debtor to the drawer.

It was *replied*: The letters proved the co-partnery, and obliged both to honour Naughton's bills. *2do*, The qualified acceptance was occasioned by the bills being sent to Ritchie in the country; but that cannot prejudice the possessor; because, if he had not accepted at all, he would have been liable upon the letters produced *in solidum*; and his acceptance for the one half can put him in no better condition for the other half, than if he had not accepted at all.

THE LORDS found, that he ought to have accepted simply, and that he was liable *in solidum*.

Dalrymple, No 95. p. 134.

1714. November 23.

WILLIAM KING against AISDALE.

JOHN RICHARDSON, draws two bills on William King; one for L. 75, payable to Robert Aisdale; and another for L. 50, to Adam Wright.

King, having no effects, refuses to accept; but, in respect of Aisdale and Wright, who were linen-merchants, and wanted the money to be laid out at a market, King takes receipts of the money on the back of the said two bills; and advances L. 100 Sterling; for which he takes Aisdale and Wright's promissory note, obliging them jointly to repay the said sum to King; in case that Richardson should not, in due time, pay a bill that King was to draw upon him for the like sum. This obligation is dated the 5th of August 1709.

No 80.

No 81.

The possessor of a bill not accepted, borrowing the money from the person drawn upon, on an obligation to repay, if the drawer should not pay by a time limited; found not entitled to plead,