

No 99.  
 Horning may  
 be taken out  
 against the  
 drawer, and  
 the several  
 indorsers at  
 once.

1747. February 26.

A. against B.

A WRITER to the fignet, upon presenting a common bill of horning against the drawer of a bill, and also against the several indorsers through whose hands it had come to the porteur, and against all of whom it had been duly protested, stated it as a doubt, How far he could regularly give out horning against all at the same time, or if horning should not first proceed against the drawer, and after discussing him, against the several indorsers *subsidiare*? which the Ordinary on the bills reported.

THE LORDS, without hesitation, ' Authorized the Ordinary to pass the bill against the whole.'

So far as regards the porteur they are all drawers; and it would be very inconvenient were they to be discussed severally, especially in the case of foreign bills, or where it might be on the faith of one of the intermediate indorsers only, that the porteur had given his money for the bill.

*Kilkerran*, (BILL OF EXCHANGE.) No 13. p. 78.

No 100.  
 Although a  
 bill was given  
 merely as a  
 security for  
 money, and  
 not *in re mer-*  
*catoria*, where  
 no third party  
 was concern-  
 ed; it was  
 found to be  
 privileged.

1748. June 22.

ROBERT TUDHOPE against THOMAS TURNBULL.

ROBERT TAYLOR, writer in Hawick, having use for L. 29 Sterling, which he knew his aunt Jean Taylor had in ready money; and chusing to hide the borrowing from his aunt, to whom he gave himself the airs of being a moneyed man, prevailed upon Robert Tudhope to act the part of the borrower. Robert Tudhope accordingly got the money and granted his bill, dated 29th March 1743, and payable the 29th of March 1744, which Jean Taylor delivered to Robert Taylor, who was her ordinary doer, to be kept for her use with her other papers. The moment she was gone, Robert Tudhope delivered the L. 29 to Robert Taylor, and took his bill for it, of even date with the other bill, and payable at the same term.

Some time thereafter Robert Taylor, pressed by Thomas Turnbull, merchant in Hawick, for payment of an account of L. 17 Sterling, could find no other fund for satisfying the creditor but his aunt's bill; which remaining blank in the drawer's name, he filled up his own name as drawer, and indorsed the same to Turnbull. Diligence upon this bill against Robert Tudhope obliged him to bring a suspension before the Court of Session; founding upon the counter-bill granted to him by Taylor, as a ground of compensation; which, in this case, he insisted ought to be good against the indorsee as well as the indorser. And, *in limine*, the following fact was ascertained by the charger's acknowledgment, That the bill was indorsed to him for payment of an account of L. 17 Sterling due to him by Taylor, made up partly of lent money, and partly of goods furnished; and that he was to account to Taylor for the surplus of the bill when received.

THE LORD ORDINARY having repelled the ground of compensation, and found the letters orderly proceeded for L. 17, to which extent the indoriation was for a