

1764. November 14. ANDREW STEVENSON, *against* Messrs STEWART & LEAN.

No 103.

A bill, of which the drawer and acceptor are both inhabitants of Scotland, if made payable at London, and duly negotiated, gives the same title to all expence and damage, as if the parties had been residing in different countries.

Found duly protested by the practice in England, though the protest was taken only by a clerk, and extended by the notary himself at home.

ANDREW STEVENSON, merchant in Glasgow, drew a bill upon Messrs Stewart and Lean, merchants, and residents in the same place, in the following form :

' Glasgow, 10th August 1762.

' Ninety days after date, pay to me, or my order, L. 227 : 16 : 4, value received from

ANDREW STEVENSON.

' To Messrs Stewart and Lean, at Messrs }
' Moffat and Graham, merchants, London. }

This bill having passed through several indorseees, came at last into the hands of one Hunter, who, upon the 11th of November 1762, being the last day of grace, presented the same for payment at the house of Moffat and Graham, which was refused, as they had no funds, at that time, of Stewart and Lean in their hands.

This laid Hunter under the necessity of protesting the bill for exchange and re-exchange, and of returning it upon the last indorsee; and it having come upon Stevenson, the original drawer, he was obliged to pay all the expences attending its dishonour. In consequence of which, he prosecuted the acceptors for indemnification of the damage he had sustained.

The defence *pleaded* by them against this action, was, *1st*, That the bill had never been duly protested at the house of Moffat and Graham; for, in fact, the notary, named in the protest, was not really present when the bill was presented for payment, and the protest taken: And that the bill, as appeared from the protest, was presented to Stewart and Lean, who were not in London; whereas, it ought to have been presented to Moffat and Graham, at whose house the same was payable. *2dly*, It was contended, That, though a protest, regularly taken, was a good ground to pursue for exchange and re-exchange, as was sought in the present case; yet this was confined entirely to the case of bills drawn and accepted by persons residing in different countries, but could never be extended to inland bills, such as this, where both parties were inhabitants of Scotland, and where the place of payment only was in a different country.

In *answer* to the *first* position, the pursuers brought a proof, that it was the universal practice in London, for the notary not to be present when the bills were presented for payment or acceptance; that the practice there was, to send a clerk to present the bill, who returns with the answer to the notary his master; in consequence of which, the notary makes out a protest, as if he himself had been actually present, and inserts the names of two witnesses as being present at the protest; which is nothing more than mere form; for, that a well employed notary in London, seldom or never presents bills himself, but always extends protests in this form. As to the bill's being presented to Messrs Stewart and Lean, who were not in London at the time, it was of no consequence, as it was only a mistake of the clerk, who imagined, that Moffat and Graham, at whose house

the bill was payable, were these gentlemen; and there was still convincing proof, that the bill had been actually presented, and payment refused.

No 103.

To the *second* defence, it was *answered*, That exchange and re-exchange were always competent to the drawer upon the dishonour of his bill, when the money was conveyed from one place to another, without the distinction of its being an inland bill or not, or whether the parties resided in the same or different countries. That, when an inhabitant of Scotland accepts a bill payable in London, it was just the same as if he himself had resided there: That exchange, in such a case, was due, and the dishonour of such a bill was attended with the same expence, as if the persons concerned were inhabitants of different countries.

'THE LORDS found the bill duly negotiated, and the drawer entitled to exchange, interest, commission, and expences upon the bill.'

A& Montgomery.

Alt. M^cQueen.

Fol. Dic. v. 3. p. 81. Fac. Col. No 146. p. 348.

1776. November 26.

WILLOCKS *against* CALLENDER and WILSON.

No 104.

It was found, that a bill, of which the acceptance was procured by concussion, was ineffectual in the hands even of an onerous indorsee. See The case, *voce* VIS ET METUS. See No 108. p. 1521.

Fol. Dic. v. 3. p. 81.

1778. February 12.

JAMES BURNET *against* WILLIAM RITCHIE.

No 105.

ANDREW GRAY, merchant in Aberdeen, became bankrupt 16th January 1776. A short time before his bankruptcy, William Ritchie, and others, in order to support his credit, obtained for him L. 1500. The money was advanced to Gray by Mr Dingwall Fordyce, to whom Ritchie and others gave their acceptance for the whole sum.

On this account Gray, (Jan. 10.) indorsed to Ritchie, and the others who had given their acceptance, bills amounting to L. 1531:14:9. A list of these was made up under this title: 'Inventory of bills lodged in the hands of William Ritchie.' And a docquet is subjoined, in which they acknowledge the receipt of these bills from Gray, 'as surety and relief to them' for their acceptance to Dingwall Fordyce, 'and oblige themselves to apply the money to the extinguishing said debt, and to return the overplus, if any be, to you, you always being obliged to indemnify us, if the money arising from said bills falls short of paying the foresaid debt.'

After Gray's bankruptcy, Ritchie gave a charge to Burnet, acceptor of one of the bills, for payment. In a suspension of this charge,

A person who had granted an obligation to account for bills indorsed, was found, notwithstanding, to be an onerous indorsee, and not obliged to allow partial payments, not marked on the bills, unless in so far as he had agreed to do so.