REPORTS.

WINTER SESSION 1866-67.

EXTRA SITTINGS.

Thursday, Nov. 1.

FIRST DIVISION.

BLACK AND CO. *v.* BURNSIDE
(*ante*, vol. i. p. 75).

Bank Cheque—Proof—Liability of Drawer. A. drew a cheque for B.'s accommodation on a bank in which he had at the time no funds. B. got the cheque cashed by C. The cheque was afterwards dishonoured. Held, *inter alia,* in an action by C. against A. for its amount, that the proof failed to show that when he cashed the cheque, C. was aware of the state of A.'s bank account, or that he did not rely on A.'s credit, and judgment against A. accordingly.

This was an action for payment of the contents of a cheque. The defender had drawn a cheque upon his bankers, with whom he had no funds, for the accommodation of one Nisbet, that he might raise money upon it. The defender was not at the time indebted to Nisbet. Nisbet got the cheque cashed by the pursuers. The cheque was afterwards dishonoured, and the pursuers brought the present action for its amount. The defender resisted payment upon various grounds. The Court allowed a proof of the circumstances. This was taken, and the case came up for determination upon the effect of the proof.

CAMPBELL SMITH (with him A. R. CLARK), for the defender, maintained that the proof showed—(1) that the cheque was an accommodation to Nisbet; (2) that the pursuers were aware of this, and did not rely on the defender's credit in cashing the cheque; (3) that the pursuers did not give the defender timeous notice of the dishonour to enable him to recover from Nisbet (who afterwards became bankrupt); and (4) that the cheque had been paid by Nisbet to the pursuers.

SCOTT (with him FRASER), for the pursuers, while admitting the first of the defender's propositions, contended that the remaining three were not supported by the proof.

The Court then gave judgment.

The LORD PRESIDENT said—I cannot say that I feel much difficulty about this case. I have listened to all the points that have been urged for the defender, but they have not convinced me that he is free from liability. It would appear that the defender drew a cheque upon a bank with which he kept an account, but in which at the time he had no money, or at least none to speak of; that he put this cheque into the hands of Nisbet, not for the purpose of his taking it to the bank, but that he might get money for it where he could. Nisbet being acquainted with the pursuers, got them to cash the cheque, which, on being sent to the bankers upon whom it was drawn, was dishonoured. It appears from the proof that nothing was said to the pursuers of the nature of the cheque—as having been drawn upon a bank in which the drawer had no funds. On the contrary, it appears that Nisbet told the pursuers that the defender was a responsible party. The cheque having been dishonoured, I think it appears that the defender was made aware of this almost immediately. It also appears that the pursuers came into personal contact with Nisbet, by whom they were told that the cheque would be honoured—meaning that the defender would in due time pay the same. There is some evidence, too, that before the bankruptcy of Nisbet, there was a meeting between the pursuers and the defender at which the latter was told that payment of the cheque would require to be made. Now, is there any reason why that cheque, which the defender would have been bound to have paid had the pursuers taken it to him immediately on its being dishonoured, should not now be paid? I can see none. It is said that there has been so much delay, the defender has been unable to get payment of the cheque from Nisbet or his estate. It appears to me that after he got notice of the dishonour of the cheque, it was the defender's duty to have looked after receiving it from Nisbet. But it is still further said that this cheque has been truly paid to the pursuers by Nisbet in the arrangement of some bill transactions. I think the evidence goes to show that the amount of the bills granted by Nisbet to the pursuers was due to them altogether irrespective of the cheque. Upon the whole, therefore, I think we must give decree in favour of the pursuers.

Lords Deas and Ardmillan concurred.

Lord Curriehill absent.

Decree accordingly, in terms of the libel, with expenses.

Agents for the Pursuers—Macgregor & Barclay, S.S.C.

Agent for the Defender—Alex. Morison, S.S.C.

Tuesday, Nov. 6.

Poor RICHARDS *v.* CUTHBERT.
(*ante*, vol. i. p. 128.)

Title to Sue—Assignee—Bankruptcy of Cedent. A person sued for payment of an I O U, in virtue of an assignation granted by the creditor in it after he had been sequestrated and discharged without composition, but before the sequestration was at an end—*Held* that she had no title to sue.

The summons in this case concluded that the defender should be "ordained to make payment to the pursuer of the sum of £100 sterling, being the amount contained in an I O U, or acknowledgment of debt granted by the defender, the said John R. Cuthbert, to and in favour of William Cuthbert, commission merchant and insurance agent in Greenock, dated the 3d day of August 1855; and in virtue of an assignation thereof by the said