

the possessor of the bill did *bona fide* acquire, it would be a great inconveniency, and far from what was intended by that act, to prejudice his purchase.

3^{to}, As to the act of Parliament 1696, in the case of notour bankrupts, the law presumes the case of such bankrupts to be known to every person, *presumptione juris et de jure*; and therefore the privilege of bills of exchange in that case behoved to cede.

4^{to}, It is not pretended that the indorsation is gratuitous.

'THE LORDS preferred the possessor of the bill, in respect it was not alleged that the arrestment was known to him, or the indorsation gratuitous in whole or in part.'

Fol. Dic. v. 1. p. 98. Dalrymple, No 93. p. 130.

* * * The same case is reported by Forbes :

In a competition for the sum, in a bill of exchange payable to Henry Gladstones, Inn-keeper at Ginglekirk, betwixt Robert Smith, to whom it was indorsed for value, and, Alexander Home, who, as creditor to the indorser, had arrested the money in the acceptor's hand before indorsation :—THE LORDS preferred the indorsee or possessor of the bill; in respect it was not alleged, that the indorsation was gratuitous without an onerous cause; or, that the indorsee knew of the arrestment when the bill was indorsed to him.

Forbes, p. 641.

1714. June 17. JAMES ARBUTHNOT *against* PYPER of Newgrange.

JAMES ARBUTHNOT having charged Newgrange, upon his accepted bill, for 39 bolls of French salt, he suspends on this reason, That the salt bill was granted upon clearing all account betwixt the parties, and mutual general discharges given at the same time of all bills, bonds, tickets, &c.; yet, nevertheless Arbuthnot having Newgrange's accepted money bill for L. 347 Scots, which fell under the general discharge, he pretended that money bill was not in his hands, but promised faithfully to give it up next day: But, contrary to the faith of the mutual discharges and communing, he indorses that bill to a third party, for an onerous cause, and Newgrange, the suspender, was forced to pay it; but now he craves to retain the salt, until he get allowance or reimbursement of the money bill, falling under the general discharge *cum omni causa*.

It was *answered*: The reason of suspension is most relevant; but it is as false, and only probable *scripto vel juramento*; more especially the question being in the suspension of a bill, which, for the favour of commerce, ought to receive all ready execution.

It was *replied*: The charge being upon a salt bill, has not all the privilege of a money bill, but more especially, the question being betwixt the first creditor and acceptor; and the qualifications insisted on are not only relevant, but probable,

No 92.

No 93.

Betwixt the drawer and indorser, where no onerous purchasers are concerned, all objections are relevant, *hinc inde*. See No 88. p. 1498.

No 93.

by the witnesses to the mutual general discharges, and the comuners, at the finishing their accounts; by whom it will be proven that this particular bill was communed upon to be comprehended in the mutual general discharges; and that the charger pretended he had it not upon him, but promised, and by oath, to give it up the next morning; all which could operate nothing against the third party to whom it was indorsed; but was most relevant against the granter of the discharge, who did indorse it; considering, that the charger being the original creditor in the money bill also, he does not pretend that there was the least intimation given to the suspender, that the said bill was indorsed; whereby the suspender had reason to believe that the charger was still his creditor, and thereby that he was exonerated by the general discharge; especially considering, that the charger was very careful to indorse the said bill likewise. But the suspender observing that he delayed to deliver the money bill, and hearing that he intended to indorse the said bill, he sent express to his correspondent at Leith, to advise him of the matter, and to forbid him to comply with the said bill; whereupon the person to whom the said bill was indorsed, did return it to the charger; which letter, writ while the whole matter was recent, was produced.

‘THE LORDS allowed a probation by the witnesses in the mutual discharges, and such as should be proven to be comuners, *cum onere expensarum* of the party that should succumb.’

Fol. Dic. v. 1. p. 98. Dalrymple, No 107. p. 150.

1714. June 24.

JAMES FAIRHOLM Merchant, *against* WILLIAM COCKBURN.

No 94.

Separate receipts, of partial payments of bills of exchange, do not militate against possessors, to whom the bills are afterwards indorsed.

MESSRS HUNTER and CRAWFORD having drawn a bill of L. 400 Sterling, on William Cockburn, payable to Alexander Campbell; the bill being accepted and part paid, Mr Campbell indorses the bill in these terms: ‘Pay L. 118 of the principal within mentioned, with the exchange current of the whole, to James Fairholm, or order; but this my indorsation is noways to militate against me.’

Cockburn the acceptor of the bill suspends, and *alleges* payment to Hunter and Crawford the drawers of the bill, conform to two receipts extending to L. 168, which ought to be allowed; because Campbell was but a name and trustee for the behoof of the drawers.

It was *answered*, Supposing Campbell a trustee, yet no respect to these receipts, because not written upon the accepted bill; for such is the favour of bills of exchange, that they are to pass current *de manu in manum*, as bags of money, and are affected with nothing but what appears upon the bill itself; otherwise merchants would be at great uncertainty in the course of trade, and would not know what bills could be safely relied upon; and it is for the same reason, that compensation, which takes place against all other debts, is not regarded to stop the currency of bills of exchange; and this is the opinion of Mr Forbes, who has written on that subject, p. 161. § 2. par. 4. *in fine*. (Edition 1703.)