

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.

No 105.

Pleaded for Burnet : That he ought to be allowed deduction of certain partial payments made to Gray, which, though not marked on the bill, are vouched by missives and receipts.

It appears, from the expressions used in the title and docquet of the inventory, that the bills were only lodged with Ritchie for security, not in payment of his acceptance to Dingwall Fordyce.

The nature of the transaction likewise implies it : Whether there is an overplus or a shortcoming, the parties being respectively obliged to account to each other for the balance.

Answered for the charger : It is evident from the transaction, that the money advanced to Gray was the money of Ritchie, and others, who borrowed it on their own credit. Gray never gave acceptance to Dingwall Fordyce for this money. The bills, therefore, were indorsed for payment of value instantly received from Ritchie and others. To the extent of that value, and until it is paid, they are onerous indorseees in these bills, and not obliged to admit any payments not marked on the bills.

The stipulations in the docquet do not aid the suspender's plea. After the value given for the bills is recovered, the charger, and others, no doubt, would only be indorseees in trust as to any balance, and accountable to Gray for the surplus, if recovered. This is the import of the docquet, which affects not the onerosity of the indorsation to the extent of the value given.

It was said, that such transactions as this are common among merchants ; and the indorseees always understood, in practice, to be onerous until the value is paid.

After the Court had pronounced two consecutive judgments in favour of the chargers, it was discovered that Gray had indorsed to Ritchie, a few days after the first indorsation, bills to the amount of L. 355, for the purpose of answering partial payments made on the former bills, not marked on them, but vouched by separate documents. Upon which the Court pronounced this judgment,

' THE LORDS adhere to their former interlocutor, finding, that the charger, in consequence of the transaction 10th January 1776, was an onerous indorseee to the bills in question ; but find, that, as the transaction was explained by the second list of bills indorsed to the charger, he is bound to admit the partial payments made by the suspender.'

For Burnet, *Ad. Rolland.*

Alt. Neil Ferguson.

Fol. Dic. v. 3. p. 82. Fac. Col. No II. p. 23.

No 106.

A proof allowed, that an indorsation of a bill had been fraudulently devised.

1785. July 27.

JOSEPH CORRIE, *against* JAMES AITKEN, and Others.

JOSEPH CORRIE sued James Aitken and others, for payment of a bill of exchange, which had been accepted by them in favour of Ninian Steel, and by him indorsed to the pursuer.