

No 129.

Thereafter, upon a reclaiming bill offered by the charger, 21st February inst. the LORDS adhered; albeit it was *alleged*, That the noise of Scot's breaking came to the suspender's ears in a few days after protesting the bill; in respect he not being acquainted by the charger, that his bill was protested, had ground to believe it was paid. And, 28th instant, the LORDS again adhered; albeit the charger offered to prove, that within six weeks after the bill was protested, he acquainted the suspender thereof; for the concealing from him the fate of his bill during the space of six weeks, was thought as culpable, as if the advice had been delayed six months; especially considering, that Mr Scot did suddenly break about the time the bill was presented.

Fol. Dic. v. 1. p. 100. Forbes, p. 397.

1711. February 7.

No 130.

A bill was duly negotiated, and afterwards the porteur took assignation to an infestment in security of the debt in the bill. This did not bar his action of recourse, once established, by the due negotiation.

DAME ELIZABETH NICOLSON, *against* WILLIAM MORISON of Prestoungrange.

IN the action of recourse, at the instance of the Lady Nicolson, against Prestoungrange, for L. 2500 merks, contained in a bill of exchange, drawn by him on Mr William Rolland and Mr Robert Gordon, payable to her; which was accepted, and thereafter protested for not payment:—THE LORDS found it relevant to infer recourse against the drawer of the bill, that it was timeously protested for not payment against the acceptors, and the protesting intimated to the drawer; albeit the possessor did not intent any process of recourse against him till two or three years after her protesting the bill; and also took assignations from the acceptors, in security of the sums contained in the bill. *See Case between these parties, Div. 5. b. t.*

Fol. Dic. v. 1. p. 101. Forbes, p. 493.

* * * Fountainhall reports the same case:

WILLIAM MORISON of Prestoungrange being debtor to Dame Rachel Trotter, relict of Sir William Nicolson of that Ilk, he gives her a bill for 2500 merks on Gordon and Rolland, his two salt grieves, payable on the 11th June 1706. They both accept; but, failing to pay at the day, the Lady protests the bill for not payment, but forbears to registrate it till December thereafter, and does not charge them with horning till April 1707, and the denunciation is not till the 31st of October thereafter. The cause of this forbearance was, that the two acceptors offered security for the money, and gave an assignation to an infestment of annualrent above the sum in the bill; but these not proving ready effectual payment, and the two acceptors breaking, the Lady raises a process against Prestoungrange, the drawer, for making the bill good, and offers to communicate and transmit to him the rights she had got from them in security. *Alleged* for Prestoungrange, You cannot recur against me, because you have been negligent and remis in negotiating the bill; for though it was protested *debito tempore*, yet you

suffered six months to intervene ere you registered it; three or four months ere you charged; and other six months elapsed before you denounced: and, after all this, you did not raise your process against me for more than a year after; so that you have been clearly *in mora*, which *moratori tantum nocere debet, et non mihi*. And it were very dangerous to commerce, to let bills lie over dormant, and then recur against the drawer when you please; whereas, if you had duly intimated to me the protest for non-payment, I could have looked both to your security and my own, which by your neglect and their retiring is now lost. *2do*, You have tacitly renounced any recourse against me, and betaken yourself to the acceptors of the bill, in so far as you have entered into transactions with them, and taken their securities, which is presumed to be *in solutum* of the bill, and extinguishes the debt as to the drawer: otherwise givers of bills can never be secure. *Answered*, There is no law limiting the time within which the havers of bills must recur; as is clear from Scarlet's *lex mercatoria* and others. Neither is intimation, by a legal instrument, necessary as to inland bills, but only certioration and advice that the bill was not honoured nor paid, and which was here done; and in regard letters signifying the same to the drawer may be kept up, therefore Mr Forbes upon bills of exchange, thinks the possessor of the bill not bound to instruct that he acquainted the drawer any other way but by his own oath. *2do*, *Ratio legis hic currit*; for they being his own servants, he ought to have inquired at them, if they had paid the bill; for *scire et scire debere hic æquiparantur*: and as to the transactions and partial payments, they are beneficial to you, seeing they will relieve you *pro tanto*, and must be presumed only in corroboration, and not in satisfaction; and I am not bound to wait till money can be made of them, (which may draw to a distance of time), but you must make your bill effectual by the warrantice implied therein. And it is known, by the practice of the Directors of the Bank, that a formal advice as to inland bills is not required, nor diligence thereon. THE LORDS found legal intimation, by way of instrument, not requisite, but any certioration was sufficient; and that the collateral securities, taken by the haver of the bill, were not to be presumed to be *in solutum*, and that they might recur against the drawer, they proving always that they had timeously acquainted him with the non-payment.

Fountainball, v. 2. p. 634.

1711. December 20.

THE EARL OF LEVEN *against* THE EARL OF GLENCAIRN.

THE deceased Earl of Glencairn, *in anno* 1690, granted bond to Mr David Scrimzeour, then Keeper of the Signet, for L. 273 Sterling, as the secretary's dues for 39 commissions to the officers of the regiment then under the Earl's command, payable out of the first and readiest of the pay due to the regiment;

No 130.

No 131.
Found in opposition to No 124. p. 1543. that precepts upon factors and