

1707. *February 18.*RUTHERFORD and SANGSTER *against* DONALDSON, Merchant in Kirwall in Orkney.

THE case is, Donaldson having furnished Rutherford and Sangster with some money, he draws a bill of exchange upon them, payable at Edinburgh, which both of them accepted; and having charged Rutherford thereon, he offers a suspension, on this reason, that, there being two obligants in the bill, and not mentioning them to be bound conjunctly and severally, he could not be charged for the whole, but only *pro rata* for the half; for in bonds where debtors are not bound conjunctly and severally, the debt divides, neither are they liable *in solidum*. Answered, Bills have a greater privilege, for the currency of trade, than bonds, and are regulated *jure gentium*, and by the custom of foreign mercantile nations, where every acceptor of a bill becomes liable *in solidum*. The Lords found so, and repelled the reason of suspension.

*Fol. Dic. v. 2. p. 381. Fountainhall, v. 2. p. 350.*

No. 53.

Found in conformity with M. Morland against Maxwell, No. 51. p. 14673.

1724. *December 10.*A. *against* B.

IN answer to a question proposed by the Lord Cowper, the Lords found, That if two or more should accept a bill, each of them was bound *in solidum*.

*Fol. Dic. v. 4. p. 296. Edgar, p. 129.*

No. 54.

1742. *June 17.*JOHN ALEXANDER and MARY HILL, *against* MARGARET SCOT, and JOHN WILSON, her HUSBAND.

ANDREW LANG drew a bill upon Thomas Scot, directed to him as principal, and three others as cautioners, conjunctly and severally. All the four accepted; and, thereafter, Lang indorsed the bill to two of the cautioners; upon which these two indorsees brought an action against Margaret Scot, as representing her brother Thomas Scot, who was bound in the bill as principal.

Objected, That bills were originally introduced into the practice of nations for the utility of commerce, and, in that view, were indulged with extraordinary privileges; that they had received a determinate form, consisting altogether of the order to pay the sum therein contained, and the acceptance of that order; so that every other obligation devised in the form of a bill, and every clause in such writing, contrary to the proper form, or inconsistent with the nature thereof, have been deemed sufficient to vacate that writing, as being no longer of the proper tenor and nature of a bill. Upon these principles it has been found, that nothing is the proper subject of a bill but money; and that an obligation, in that form, to deliver a fungible, is not valid. This, and many other instances that

No. 55.

A bill is good, tho' directed to one as principal, and to others as cautioners.