

1728. *February.* GRIERSON *against* EARL OF SUTHERLAND.

No III.

A BILL drawn payable to a third party, bore this clause: 'This, with the porteur's receipt, shall oblige me to pay the like sum to you or your order.' The acceptor having paid the bill, indorsed the obligation for repayment. In a process, at the indorsee's instance against the drawer, this defence was proposed, that the obligation to repay was of the nature of an ordinary obligation, no bill of exchange, and though indorsable, a privilege competent to any simple obligation, it was liable to compensation upon the debt of the cedent. THE LORDS repelled the defence. See No 50. p. 1447.

*Fol. Dic. v. 1. p. 99.*

1755. *March 6.* DAVID OGILVIE *against* ROBERTSON of Redleikie.

No III.

OGILVIE accepted a bill to the order of Robertson, bearing for value; this bill was duly protested for non-payment, and the protest registered. After the bill had lien over five years, Ogilvie brought a process against Robertson before the baron-bailie of Alyth, setting forth, That Robertson having purchased some victual from Ogilvie's brother, did, at the seller's desire, pay part of the price to Ogilvie before receiving the victual, and took the bill in question for the sum, agreeing to return the bill when the victual should be delivered: That the victual was soon after delivered; and therefore concluding, That the bill should be returned. Robertson having denied the libel, the bailie allowed a proof by witnesses; to which Robertson, who was present, made no objection. The witnesses deposed in terms of the libel. The bailie decerned Robertson to deliver up the bill, and Ogilvie charged him for that effect; but went no farther in diligence. Robertson obtained a suspension, but did not intimate it till nine years thereafter; when, at the same time, he charged Ogilvie with horning to pay the bill. Ogilvie thereupon wakened the suspension, and put up protestation for production thereof; and, on 7th July 1750, in common form, gave it out with the process of wakening, to be seen. Robertson did not return it that session; but, in the ensuing vacation, proceeded to extreme diligence upon his horning; and, by a caption, obliged Ogilvie to pay the sum in the bill with fourteen years interest. Ogilvie thereupon raised process of oppression and damages, setting forth these facts; and further alleging, as an aggravation of the oppression, That though Robertson lived in his neighbourhood, and had a messenger at hand, yet he did nothing till he found him in the market of Perth, 16 miles from his home; and there apprehended him by the caption, in order to distress him, and ruin his credit.

This process being conjoined with the suspension, it was *pleaded* for Robertson, That the proof brought before the inferior court was inhabile; for that a written obligation is not to be taken away by parole evidence; therefore the proof was

One person granted a bill to another for goods to be delivered. After some years the acceptor brought an action to have the bill returned, the goods not having been delivered. A parole proof of this fact was allowed by an inferior court, who ordered the bill to be returned. The holder, while a suspension depended, proceeded in diligence on the bill; found liable in damages and expenses.