

No 94.

Wilks, and did not. *2do*, Neither could he be liable on the bill he had accepted; because Scot, the indorser, had suffered the bill drawn on him by Brown, payable to Wilks, to be protested; whereby Wilks had recourse upon Brown: And albeit bills of exchange are favoured in their transmission, and not liable to objections as other debts, yet the act of Parliament 1696, anent bankrupts, takes place in bills of exchange which are not indorsed for present value, but in payment or security of former debts, as was found, on very full debate, 16th January 1713, Campbell of Glenderowall against Graham of Gorthie, No. 192. p. 1120.; and thereupon Brown, the suspender, hath raised a declarator of bankrupt; and will make appear that Scot was entirely broken before he indorsed Brown's bill; and the said indorsation was made for obtaining payment of his other bill drawn upon Brown of the 3d of April, which Brown had most justly suffered to be protested; and now craved to be free, both of the said bill of the 3d of April, because he had no effects; and likewise to be free of his other bill indorsed by Scot, because Scot had failed in payment of his accepted bill to Wilks, and therefore could not indorse Brown's bill to Mitchel after he was become bankrupt.

It was *answered*: The whole reason of suspension resolves in that of bankrupt; which can take no place in this case, because it is most certain, that the bill drawn by Scot, on the 3d of April, was for money paid down; and, of the same date, Brown's bill payable to Scot, was noted upon the back as above-mentioned, which did connect Brown's accepted bill with the bill drawn by Scot upon him; so that Mitchel had not only a bill drawn upon Brown, but had a sufficient document to oblige Brown to accept and pay; and though the indorsation was posterior, by that he had only the benefit of more ready execution; but, without an indorsation, Brown would have been obliged to have paid Scot's bill, upon production of the other bill noted on the back, so that Mitchel did not simply follow Scot's faith.

THE LORDS repelled the reasons of suspension, and found the letters orderly proceeded, No 62. p. 1467.

Fol. Dic. v. 1. p. 98. Dalrymple, No 111. p. 154.

No 95.

1734. February 14.

NEILSON *against* RUSSEL.

AN arrester of a sum in the hands of the acceptor of a bill, was preferred to an onerous indorsee; because the bill not being signed by the drawer, at the date of the arrestment, was considered, to have no privilege.—LORD KAMES has written this *notandum* upon the petition for the indorsee, ' Upon enquiry, I find * the custom of merchants is otherwise.' See The particulars, *vide* BLANK WRIT.

See No 34. p. 1435. *Session Papers in Advocates' Library.*