

No 5.

tion, may be established by the form of a bill, which would confound all securities, and render ineffectual all our excellent regulations, that are designed to secure us against forgeries. It is true indeed, that from the favour of commerce, rights to merchandise may be conveyed without all solemnities of law; but then, though conceived by way of bill or precept, they have not the privileges contained in the said acts of Parliament, as was decided, *Lesly contra Robertson*, No 1. p. 1397.; *Douglas contra Erskine*, No 2. p. 1397.: But however the ordinary solemnities be dispensed with, on this account altogether, that the matter is *in re mercatoria*, though not precisely for money, when precepts concern the delivery of salt, meal, or other merchandise; to extend that to obligations, for daily or yearly prestations, during one's life, or to an uncertain event, would be to overturn the foundations of our law anent bills. Neither is this case similar to that of a bill drawn for a certain sum of money, payable in different parcels; which indeed is a proper subject in commerce, and only so many bills in one paper, as there are terms of payment; whereas here, the precept being for a daily prestation, can no more be a *medium* of trade than a life-right, or indeed any other *security* whatsoever, that can be figured in imagination; and, therefore, this improbate deed can never stand against the force of the good and laudable laws, made to prevent the ruin of families, by guarding against the artifices of forgers.

' THE LORDS refused to sustain this bill.'

*Fol. Dic. v. 1. p. 95. Rem. Dec. v. 1. No 25. p. 55.*

No 6.

1722. December 6.

WILSON against SMITH.

A BILL was drawn in the following form: ' Sir, against the first of January, pay to me, or order, at the Clerk's Chamber in Muffelburgh, the sum of L. 100, and that as the price of my growing crop of corn and grass in the town of Muffelburgh, which are instantly sold you at the foresaid price, by your humble servant, &c.'

THE LORDS found this an effectual bill, although it was *pleaded*, That it could not be considered as a proper bill, not being a simple acceptance of a draught for a sum of money, but really and truly a contract of sale.

*Fol. Dic. v. 1. p. 95.*

No 7.

It cannot vitiate a bill, to stipulate what would equally follow, though it were not expressed.

1738. February 21.

TROTTER against SHEIL.

A BILL was sustained in the following terms: ' Pay to me, or order, the sum of \_\_\_\_\_; and this, with my receipt, shall be a sufficient discharge of all I can ask or claim of you preceding this date;' though it was *pleaded*, That the bill was null, as containing a general discharge, incongruous to the nature and

form of a bill; in respect it was *answered*, That if the bill was the result of a count and reckoning, there could be no harm in expressing the cause of granting; and, once fixing this point, the very retiring of the bill is a general discharge of course. The rule is, that it cannot vitiate a bill, to stipulate what would equally follow, though it were not expressed. See GENERAL DISCHARGES, &c.

*Fol. Dic. v. 1. p. 95.*

Act. H. Murray-Kynnymound.

Alt. H. Home.

No 7.

1724. January 31.

HUGH HAMILTON, Merchant in Edinburgh, *against* Captain JAMES DALRYMPLE.

No 8.

An obligation to deliver a fish debenture, in payment of a quantity of salt, found indorfbale as a bill.

CAPTAIN DALRYMPLE granted an obligation to deliver to Walter Riddel, a fish-debenture, in payment of a certain quantity of salt, as valued by Charles Sheriff in Prestonpans: This obligation was indorfed by Riddel to Mr Hamilton, and by him to William Dundas, his correspondent at Rotterdam; who again indorfed it to Van Vred at Amsterdam. The Captain having refused payment, the obligation was returned to Mr Hamilton, and the two last indorfations were deleted.

Mr Hamilton pursued the Captain for delivery of the fish-debenture, or payment of the value of the salt, in terms of the obligation. Among other defences for the Captain, it was *pleaded*, *rmo*, That this obligation was not indorfable, as being rather a contract of sale of salt than a bill. *2do*, That it had been twice indorfed after it came into Mr Hamilton's hands, and these indorfations deleted; which, as it was unwarrantable, so it could never make the right return to the pursuer; but he ought to have taken a re-indorfation from the person to whom it was last indorfed.

It was *answered* for the pursuer; *rmo*, That the obligation being betwixt merchants; and in *re mercatoria*, it was very properly conveyed by indorfation; and this was agreeable to their constant practice. *2do*, The practice of scoring indorfations was never before quarrelled among merchants; and, if it were found unwarrantable; it must destroy all commerce; for merchants cannot recover payment from their debtors abroad, without indorfing their bills to some trustee; and it would be hard to oblige the indorfee, in case of not recovering payment, to re-indorse the same; for thereby he would become liable for the drawer.

THE LORDS repelled the defences, in respect of the answers. See SECT. I.

Act. Jo. Stewart.

Alt. H. Dalrymple, sen.

*Fol. Dic. v. 3. p. 74. Edgar, p. 18.*

\* \* \* The same was found, 25th July 1744. Hope against Neilson; and the indorfee to a blank indorfation of a debenture was preferred to a creditor of the indorfer, who, posterior to the indorfation, had arrested in the hands of the Commissioners of the Customs.

*Fol. Dic. v. 3. p. 74. from MS.*