

No. 48. 1750, Dec. 11. LOCKHART *against* ELIZABETH MERRIE.

A BILL dated 20th May 1731, payable at Martinmas, with annualrent from the date till re-payment, was, because of that clause of annualrent, found null by Lord Minto; and this day we adhered, and refused a bill without answers.

No. 49. 1751, Jan. 29. CRUICKSHANKS *against* MITCHELL.

THIS case was reported by me, and the only point that created difficulty was the first. Whether a bill from Aberdeen on London must in order to recourse be protested for non-payment within three days of grace, or if it is sufficient to protest the first day after the days of grace? and as that depended on the custom of London, they resolved to ask the opinion of Sir John Barnard and Benjamin Longwait, Deputy-Governors of the Bank concerning it; and Arniston having drawn a commission for that effect, I being in the Chair signed it yesterday, and for the novelty have subjoined a copy of it:

“ The question having occurred in a suit before the Lords of Council and Session in Scotland, Whether a bill of exchange drawn in Scotland, payable in London, and which in Scotland is considered as a foreign bill, must be protested upon the third or last day of grace against the acceptor, in order to afford recourse against the drawer; or if protesting the bill upon the fourth day after the day of payment, or first day after the full expiry of the days of grace, be sufficient and is to be held as a due negotiation, so as to afford the recourse aforesaid?—the Court considering that this question may be of great consequence in the mutual intercourse of trade, not only betwixt this place and London, but with foreign parts, and that writers upon this subject seem not to be uniform in their opinions, thought it proper for the greater certainty to enquire into the custom and practice of London with regard to the above question, and for that end to grant letters recommendatory to some persons in London of known integrity, ability, and skill in mercantile affairs in whom they might confide, to report and certify their opinion and the practice of London with respect to the above question into this Court; and in consequence of that resolution, have recommended, and hereby recommend to Sir John Barnard, Knight, Member of Parliament, and Benjamin Longwait, Governor-Deputes of the Bank of England, to report and certify to this Court their opinion upon the question aforesaid, and what is the established custom of London in that particular. Signed by order and in presence of the Court by their President for the time being, this 8th December 1747. *Sic subscribitur* P. Grant.—This to be recorded in the books of sederunt,—9th December 1747.

This was the case stated 9th December, and Sir John Barnard and Benjamin Longwait having given no answer, the Court resumed the question, and found, that the protesting on the first day after the days of grace in London was not sufficient to entitle the creditor to recur upon the drawer, 17th June 1748, *renitent*. Arniston *et me*; and on a reclaiming bill having given commission to prove the practice in London, 7th July 1750, they adhered, *renitent*. I am told, the President, for I was in the Outer-House. But November 7th we altered by a great majority, and found recourse not barred;—and 29th January 1751, altered and adhered to the first interlocutor in 1748.