

fore if payment had never been recovered, yet there would have been no recourse. *2do*, In this circumstantiated case we doubted if the indorsation was presumed onerous.

No. 46.

1750. July 4.

A. against B.

No. 47.

AN accepted bill payable to the drawer who was named in the body of it but not signed by him, being protested and registrated, the Lords refused to give summary horning on it; because if it was not written by the drawer it was null, and that could not appear to us;—on Murkle's report from the bills.

1750. December 11. LOCKHART of Birkhill against ELIZABETH MERRIE.

No. 48.

A BILL bearing annualrent from the date till repayment was found null, and a reclaiming petition against Lord Minto's interlocutor refused without answers. (See DICT. No. 30. p. 1427.)

1751. January 29. CHARLES CRUICKSHANK against MITCHELL.

No. 49.

A BILL payable in London being duly accepted, but not paid, and being Days of grace. protested for not payment only on the 4th day after the term of payment, being the first day after the days of grace; the question was, whether it was duly negotiated; and as that depended on the custom of London, the Court gave a letter recommendatory to Sir John Bernard and Benjamin Longwaitt, Governors of the Royal Bank, to certify the practice of London, whereof see a copy in my MS.\* They declining giving any opinion, and, 17th June 1747, we resumed the consideration of it, and found it not duly negotiated. But upon a reclaiming bill we allowed a proof of the custom of London in the case of Scots bills; and on report of that commission, 7th July, the Lords adhered,—*renitente* President, as I was told, for I was in the Outer House; but on a new reclaiming bill we altered, and by a great majority found recourse not barred, 7th November 1750; and on a reclaiming bill

\* See NOTES.

No. 49. for Mitchell, and answers for Cruickshank, the Lords altered and adhered to the first interlocutor. This bill and answers are worth reading.\* *Vide* Ramsay against Hogg, No. 31. *supra*. (See DICT. No. 145. p. 1576.)

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1751. *February 19.* KERR *against* HUGH CLERK.

No. 50.  
Bills constituting a  
submission sus-  
tained.

A SUBMISSION being entered into not in the ordinary form, but by both parties mutually accepting bills to each other for a certain sum, and the creditor in each bill indorsing it blank, and so consigning both in the arbiter's hands, they gave their decreet-arbitral by delivering to one of the parties both bills; viz. his own acceptance discharged, and the other party's with a partial receipt filled up in the blank, which restricted the bill to the sum they thought due; and this bill being charged for and suspended, for that this was debording quite from the nature of bills as vehicles of commerce, and a dangerous precedent; yet the Court repelled the objection and sustained the bill.

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1751. *July 24, 30.* MONCRIEF *against* MONCRIEF.

No. 51.

A BILL payable at a term with interest was found null by Lord Kilkerran. We adhered, and refused two reclaiming bills, agreeable to sundry precedents marked by me on the papers. The bill was for L.40, and was written by the acceptor.

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1751. *December 13.*  
MONCRIEFF of Tippermalloch *against* Sir WILLIAM MONCRIEFF of that Ilk.

No. 52.

BILL accepted in 1719 payable on demand, being put in suit only in 1746 after the death of the acceptor, the Lords found that no action did lye for the money, notwithstanding a missive letter from the acceptor in 1720, excusing the not payment of the money, and promising annualrent, and some other circumstances to excuse the long taciturnity: And on another bill by the same acceptor Sir Thomas Moncrieff, to the same creditor Sir Hugh Moncrieff of Tippermalloch in 1736 for 1000 merks, payable on demand; the Lords found annualrent due only from the citation in this process. (See DICT. No. 7. p. 478 and No. 31. p. 1428..)

\* Lord Elchies's Session papers were deposited in the Advocates' Library along with his MSS.