

it on the last day of grace; and that there was no necessity for previously presenting for acceptance, and protesting for want of it on or before the day of payment; with whom the merchants of London also agreed.

THE LORDS, therefore, receded from the judgment they had given in 1743, in the case of Ramsay and Hogg, and found, 'It was sufficient to protest the bill for not payment, within the days of grace; and repelled the defence of not duly negotiated, for not having presented the bill for acceptance when the same became due.' See This case by D. Falconer, Div. 4. Sec. 2.

Kilkerran, (BILL OF EXCHANGE.) No 23. p. 87.

No 83.

1768. November 17. GAVIN against KIPPEN and Co. and Others.

MESSRS DUNLOPS of Rotterdam, having sold the ship Dorothy to the Whale-fishing Company of Borrowstonnefs, at the price of L. 2100 Sterling, drew bills, for L. 400, on John Campbell, one of the partners, payable to David Gavin, to be placed to account of the Dorothy.

For Campbell's reimbursement, the Messrs Dunlops gave him an order on the Company; who afterwards obliged themselves to make payment to him.

Mr Gavin protested the bills for not acceptance; and Messrs Dunlops having failed, arrestments were used, by Kippen and Co. and Others, in the hands of the Whale-fishing Company.

In a competition, 'the Lords preferred Mr Gavin,' upon the principles established in the case, *Mitchel contra Mitchel*, No 60. p. 1464.; where it was found, that a protest for not-acceptance was equivalent to the intimation of an assignation.

It was *argued* for Kippen and Co. :—That, as the bills were drawn upon Campbell, and protested against him, there was no intimation to the Whale-fishing Company. But it was *answered*, That, after the obligation granted to Campbell, the price fell to be considered as in his hands; and was effectually assigned to Mr Gavin, by the bills drawn upon Campbell, and protested before the date of the arrestments.

Act. Wight.

Alt. Lockhart.

G. Ferguson.

Fac. Col. No 79. p. 327.

1778. March 4. JOHN SPOTISWOOD, against ARCHIBALD M'NEIL.

GRAHAME being indebted to Spotiswood, gave him a bill for the money on M'Tavish, his debtor. M'Tavish refusing to accept, the bill was duly protested for non-acceptance, and afterwards for non-payment, 1st May 1775.

Thereafter Spotiswood, and his attorney, raised diligence on the bill, and arrested, in the hands of M'Tavish, 30th October 1775; and brought a furthcoming. Archibald M'Neil, a creditor of Grahame's, likewise arrested in the hands

No 85.

A bill protested for not acceptance, found to be equivalent to an intimated assignation, and preferable to a pos-

No 85.
terior arrest-
ment in the
hands of the
person drawn
upon.

of M'Tavish, 17th September 1775, upon a depending action against Grahame, in which he afterwards obtained decret.

A competition ensued betwixt Spotifwood and M'Neil, as to their preference upon the funds in M'Tavish's hands; in the course of which, Spotifwood repeated an action against M'Tavish for payment.

Pleaded for Spotifwood: Grahame's bill on M'Tavish, and the protest for non-acceptance, are equivalent to an intimated assignation; and, therefore, must be preferable to M'Neil's arrestment, which is posterior to the protest.

Pleaded for M'Neil: If Spotifwood had chosen to take the bill and protest as a virtual assignation, his action for payment lay against M'Tavish alone, as his proper debtor. He could not have had recourse against Grahame; for, the only warrantice implied in an assignation, is, that the debt exists; not that the debtor is solvent. But Spotifwood, by using arrestment in the hands of M'Tavish, rejected to rest on his security, and hold the bill as an assignation. The diligence imported, that M'Tavish remained debtor to Grahame, and that Spotifwood had still recourse on Grahame; which is inconsistent with the plea, that he is assigned to the debt. M'Neil's arrestment being prior to that used by Spotifwood, he is preferable.

The Court were of opinion, that the using of the arrestment afterwards, did not bar Spotifwood from pleading his preference on the bill and protest, as equivalent to an assignation intimated.

The judgment was, 'In respect of the bill drawn by Grahame upon M'Tavish, presented to him for acceptance on the first March 1775, and protested against him for not payment, on the first of May thereafter, find John Spotifwood and his attorney, preferable on the sums due by M'Tavish to the common debtor.'

For Spotifwood, *Solicitor General.*

Alt. Crosbie.

Fol. Dic. v. 3. p. 79. Fac. Col. No 18. p. 33.

* * * *See* Mitchell against Mitchell, No 60. p. 1464.

* * * *See* Hog against Frazer, in the next Section.

S E C T. II.

Extraordinary Privileges of Bills.

1664. July 8. HUGH KENNEDY *against* GEORGE HUTCHISON.

No 86.
The acceptor
of a bill died
soon after ac-
ceptance, be-
fore any
mora was in-
curred. No
exchange or
re-exchange

HUGH KENNEDY as assignee, by Sir Mark Ker, to a bill of exchange, which was drawn by George Hutchison, upon William Shaw at London, payable to Sir Mark, for like value received from him, did obtain decret against George Hutchison and one Shaw, as intromitters with the goods of William Shaw, both for the bill itself, and for the exchange, and re-exchange; the bill being protested for not payment. This decret being suspended, it was *alleged*, That there could