

bills founded on. The correspondence founded on by the respondents, though perhaps of not very great importance, furnishes, so far as it goes, an additional reason why caution should be found."

The complainer reclaimed, and asked to have the note passed without caution.

FRASER and MACDONALD for him.

SOLICITOR-GENERAL and BIRNIE in answer.

The Court adhered.

Agent for Complainer—W. P. Anderson, S.S.C.

Agents for Respondents—Renton & Gray, S.S.C.

Saturday, March 19.

MARTIN & SON V. M'NAB.

*Diligence—Bill—Fraud.* Suspension of a charge upon a bill—alleged to be fraudulently drawn, accepted and indorsed—*refused.*

The complainers presented a note of suspension and interdict against a charge upon a bill drawn upon and accepted by them. They thus stated the ground of their suspension:—"That the complainers have been charged, at the instance of the said John Edward M'Nab, to make payment of the sum of £384, 0s. 6d. sterling, and the legal interest thereof since the same became due and till paid, contained in and due by a bill, dated the 26th day of October last, pretended to be drawn by Wright, Napier & Company, payable three months after date, upon, and pretended to be accepted by, the the complainers at four months, which bill is pretended to have been indorsed by the said drawers, without recourse to John Napier, tea merchant in Glasgow, by him to Marion M'Nab or Blair, residing there, and by her to the said respondent, under an extract registered protest, dated 1st June 1869, upon which the complainers were charged, on the 4th June 1869, most wrongously and unjustly."

Martin's son, who was in partnership with him, died two years ago; and thereon Martin took his son-in-law Lawrie into partnership with him. Lawrie, he said, looked after the business, and having involved himself through some speculations in joint-stock companies, &c., he resolved to dissolve the partnership. Meantime, he said, Lawrie had made fraudulent use of the firm's name for his own purposes—in concert with John Napier, a partner of the firm of Wright, Napier & Company. Napier in name of his firm drew the bill charged upon on the complainers, and Lawrie accepted it in their name. This bill, Martin further stated, had been fraudulently, and with a full knowledge of the circumstances, indorsed by Napier to a Mrs Blair, and by her to her brother, the respondent. In these circumstances the complainers maintained the bill and diligence should be suspended with expenses; and they lodged issues to have their allegations verified. The respondents pleaded, *inter alia*,—" (3) The complainers' averment that the respondent gave no value for the bill charged on can only be proved by the respondent's writ or oath. (4) The whole averments of the complainers as to the circumstances connected with the granting of the bill charged on are irrelevant in answer to a demand for payment by the respondents."

On 1st March 1870 the Lord Ordinary (JERVIS-WOOD) pronounced the following interlocutor:—"The Lord Ordinary, having heard counsel, and made avizandum, and considered the debate, with the record, productions, and whole process, Sus-

tains the third and fourth pleas in law for the respondent; and, with reference thereto, appoints the cause to be enrolled, that the parties may be heard as to further procedure therein; reserving, *in hoc statu*, the matter of expenses.

"*Note.*—It appears to the Lord Ordinary that were he to grant to the complainers in this process an investigation by means of a proof at large, under issues or otherwise, into the circumstances which are set forth in the statements made on the record on their behalf, he would run the hazard of interfering wrongly, so far as his judgment could take effect, with the valuable privilege of summary diligence, competent in the general case to a party holder of a bill of exchange. Proof by writ or oath is, however, in the opinion of the Lord Ordinary, open to the complainers in this process; and to such evidence they may, if so advised, still resort."

Leave having been granted, the complainers reclaimed against the interlocutor.

MILLAR, Q.C., and SCOTT for them.

SOLICITOR-GENERAL and ASHER in answer.

The Court adhered, reserving the question of expenses, and recalling the interlocutor so far as regarded the fourth plea in law for the respondent.

Agent for Complainers—James Renton, S.S.C.

Agent for Respondent—James Buchanan, S.S.C.

Saturday, March 19.

MERCER V. ANSTRUTHER'S TRUSTEES.

*Evidence—Deposition.* The evidence of a pursuer allowed to be taken on commission, as she was in the Mauritius, in very delicate health; and if her deposition were not taken there would be risk of her evidence being lost, or of great delay.

Mr and Mrs Mercer having raised an action against the trustees of the late James Anstruther (Mrs Mercer's father), in which *inter alia* they concluded for reduction of their marriage-contract, by which they alleged Mrs Mercer renounced certain rights competent to her under the marriage-contract of her father and mother, under essential error of the nature of these rights, the Court allowed the pursuers a proof of their averments relative to the circumstances under which their marriage-contract was executed. Mr and Mrs Mercer are both resident in the Mauritius. In July last the pursuers petitioned the Court to allow both Mr and Mrs Mercer to be examined on commission. The Court allowed this in the case of Mr Mercer, on condition that Mrs Mercer was examined in Court. An affidavit was now presented to the effect that Mrs Mercer's health was in too critical a state to permit her undertaking so long a voyage for some time, and the pursuers again petitioned the Court to allow Mrs Mercer's evidence to be taken on commission.

WATSON and SHAND for pursuers.

SOLICITOR-GENERAL and BALFOUR in answer.

The Court granted the petition. It was in general highly inexpedient to allow parties to be examined as witnesses for themselves, except in presence of the Court and of the jury, and subject to cross-examination. But the circumstances of this case were very peculiar. The distance was very great; Mrs Mercer's health was delicate; it would be unreasonable to expect her to come home now;