

be no exchange, or re-exchange, nor any thing paid for the bill ; because the bill was not lawfully protested ; but being accepted by Shaw in London, he shortly after died ; and it was protested at his house where he died, before none of his relations, having neither wife nor children. The charger *answered*, That he took instruments on the defence, and alleged, that he needed not to prove the passive title. *Secondly*, That he had done all that was requisite, having protested at the dwelling-house where Shaw resided.

THE LORDS found, That in this case, death intervening, which was an accident, there could be no exchange nor re-exchange, because this was no voluntary failure, nor fault ; but found that the charger, as assignee, might either take himself for the single value against the person drawer of the bill, or to his successors on whom it was drawn.

*Fol. Dic. v. 1. p. 99. Stair; v. 1. p. 211.*

1699. *January 31.*

STUART and GORDON *against* ALEXANDER CAMPBELL, Merchant in Edinburgh.

A BILL of exchange is drawn upon two partners, which is accepted. Afterwards, one of the partners dying, the other is charged, and suspends on this reason, that he to whom the bill was first indorsed and made payable, was debtor, by a ticket, to one of the partners in the equivalent sum, before he assigned it ; and so he must have compensation.—*Answered, 1mo*, That could only reach his half of the bill who had the ground of compensation ; but can never operate for his half who had no such ground. *2do*, By the laws of France, and all other trading nations, compensation takes not place in bills of exchange ; which must have summary course, and may not be clogged with such inconveniencies, else all commerce may be stopped ; for a bill is reputed as a bag of money, which goes from hand to hand, *fictione brevis manus*, and serves as a fund of credit for a considerable space of time, like bank notes.—*Replied*, Compensation is, by construction of law, reputed equivalent to payment ; and, by the *concursus debiti et crediti*, operates extinction *ipso jure*. *2do*, Though foreign bills of exchange may claim this privilege, for celerity of trade, favoured *jure gentium* ; yet inland bills, as this is, cannot be excepted from the common law of compensation.—*Duplied*, By the very acceptance of the bill, you renounce any ground of compensation you had ; for, however it was competent before, you have passed from it now. The case being new, and having inconveniencies on both hands ; some moved to have it farther reasoned in their own presence ; but the plurality being clear, they repelled the compensation.

*Fol. Dic. v. 1. p. 98. Fountainball; v. 2. p. 39.*

\* \* \* The same case is reported by Dalrymple :

THERE being an inland precept drawn upon George Clerk and Alexander Campbell, payable to Gordon, or his order, and accepted ; Gordon indorsed the same to Stewart, who charges Campbell for payment.

No 86.  
found due,  
there being  
no voluntary  
fault.

No 87.  
Compensation upon the indorser's debt, not receivable against the onerous purchaser. This holds both in foreign and inland bills.

No 87.

Campbell suspends, and *alleges* compensation against Gordon, the indorser, in as far as he entered into a contract with George Clerk, one of the acceptors, for a quantity of coals to be furnished to him at a certain price, which must compensate at least for George Clerk's half of the bill.

It was *answered*, No compensation is receivable against a bill accepted, payable to the presenter, or his order; for commerce doth require that such bills should pass from hand to hand, as an effectual and unquestionable security; and, if there had been any exception, the bill ought not to have been accepted.

It was *replied*, That compensation is equivalent to payment, and competent against all obligations whatsoever; and the bill might have been lawfully accepted in contemplation of that exception, which is no prejudice to commerce; seeing it is a defence authorized by law; and, whatever might be alleged in a foreign bill, yet the law of this nation ought to regulate inland precepts.

It was *duplicated*, There is neither law nor reason to admit compensation upon the debt of an indorser, in case of an accepted bill; for such bills being drawn for ready payment, if they be not accepted without all quality and condition, it is free to take a protest, and recur upon the drawer, who will be liable to make them good; and, if the suspender had not accepted, Gordon would have recurred, and got his money; and the suspender having accepted the bill, payable to Gordon, or his order, it were against all reason to obtrude Gordon's debt to the charger, who relied upon the accepted bill. It is true, if the suspender had any ground of debt against the charger, compensation would be received; or if Gordon had pursued the suspender, as debtor to the drawer, in that case he might have compensated Gordon.

'THE LORDS repelled the reason of compensation; and found, that a bill accepted, payable to the presenter, or his order, could not be compensated upon the debt of the indorser.' See COMPENSATION.

*Dalrymple, No 13. p. 16.*

1706. February 13. GAVIN PLUMBER *against* ARCHIBALD HOUSTON.

No 88.

Between the drawer and acceptor themselves, where one or more purchasers are not concerned, all objections are relevant *hinc inde*, as in other contracts.

JAMES HOUSTON draws a bill on Archibald his brother for L. 22 Sterling, payable to Gavin Plumber. Archibald accepts the bill; but afterwards failing in payment, it is protested against him, and being registered, he is charged thereon; who suspends, on this reason, That though the ground of the charge be an accepted bill, yet he offered to prove, by the charger's oath, that the true cause of it was the price of the fourth part of a ship sold by the said Gavin to him; and that when he came to take possession of the same, he was debarred by bottomries contracted upon it before the sale; and so Mr Plumber can never crave the price till he deliver the thing sold, that being *causa data causa non secuta*. *Answered*, Whatever be the cause of the bill, there can be no inquiry after acceptance, such bills being as current as lying money beside a merchant or factor;