

form of a bill; in respect it was *answered*, That if the bill was the result of a count and reckoning, there could be no harm in expressing the cause of granting; and, once fixing this point, the very retiring of the bill is a general discharge of course. The rule is, that it cannot vitiate a bill, to stipulate what would equally follow, though it were not expressed. See GENERAL DISCHARGES, &c.

Fol. Dic. v. 1. p. 95.

Act. H. Murray-Kynynmound.

Alt. H. Home.

No 7.

1724. January 31.

HUGH HAMILTON, Merchant in Edinburgh, *against* Captain JAMES DALRYMPLE.

No 8.

An obligation to deliver a fish debenture, in payment of a quantity of salt, found indorfbable as a bill.

CAPTAIN DALRYMPLE granted an obligation to deliver to Walter Riddel, a fish-debenture, in payment of a certain quantity of salt, as valued by Charles Sheriff in Prestonpans: This obligation was indorfb by Riddel to Mr Hamilton, and by him to William Dundas, his correspondent at Rotterdam; who again indorfb it to Van Vred at Amsterdam. The Captain having refused payment, the obligation was returned to Mr Hamilton, and the two last indorfations were deleted.

Mr Hamilton pursued the Captain for delivery of the fish-debenture, or payment of the value of the salt, in terms of the obligation. Among other defences for the Captain, it was *pleaded*, *rmo*, That this obligation was not indorfbable, as being rather a contract of sale of salt than a bill. *2do*, That it had been twice indorfb after it came into Mr Hamilton's hands, and these indorfations deleted; which, as it was unwarrantable, so it could never make the right return to the pursuer; but he ought to have taken a re-indorfation from the person to whom it was last indorfb.

It was *answered* for the pursuer; *rmo*, That the obligation being betwixt merchants; and in *re mercatoria*, it was very properly conveyed by indorfation; and this was agreeable to their constant practice. *2do*, The practice of scoring indorfations was never before quarrelled among merchants; and, if it were found unwarrantable; it must destroy all commerce; for merchants cannot recover payment from their debtors abroad, without indorfing their bills to some trustee; and it would be hard to oblige the indorfee, in case of not recovering payment, to re-indorfb the same; for thereby he would become liable for the drawer.

THE LORDS repelled the defences, in respect of the answers. See SECT. I.

Act. Jo. Stewart.

Alt. H. Dalrymple, sen.

Fol. Dic. v. 3. p. 74. Edgar, p. 18.

* * * The same was found, 25th July 1744. Hope against Neilson; and the indorfee to a blank indorfation of a debenture was preferred to a creditor of the indorfer, who, posterior to the indorfation, had arrested in the hands of the Commissioners of the Customs.

Fol. Dic. v. 3. p. 74. from MS.