

No 509.

follow, if I owe a merchant in London L. 100 per bond, and he draws a bill upon me for L. 50 as part of the bond, which I accept payable to a third party, if this merchant shall afterwards assign my whole bond, the assignee will recover the whole from me; because it cannot appear otherwise than from the bill itself, that it was accepted prior to the assignation. In like manner, an inhibition against any man will cut off all bills accepted by him, though never so long before the inhibition; and if one becomes bankrupt, all bills granted by him in satisfaction of any of his creditors, of whatever date, will fall to be cut off by the statute 1696. Now if all, or any of these consequences did obtain, bills in a great measure would be rendered ineffectual, a loss irreparable in the matter of trade. But our practice runs directly contrary in every particular; it is an established rule, that no exceptions are good against an onerous indorsee, not even payment to the indorser, and far less any objection from the date. And accordingly, by the common custom of merchants, both here and elsewhere, bills are probative of their date, as well as of any other thing contained in them: See Forbes upon bills, p. *ult.* As to the defender's arguments: To the *first, answered*, Bills and holograph writs are in few things upon the same footing; holograph writs taken as securities for debts, to lie over for some time, are the more suspected, that it is easy for a creditor to get his security made firm by adhibiting two witnesses; but bills that are never designed to lie over, are less suspected when duly negociated, and so are more countenanced than holograph writs. To the *second*, It is allowed the want of formality in bills, may possibly give opportunity to sundry kinds of fraud; but any view of that nature, has never been judged by politer nations, as sufficient to balance the ease and benefit they produce in the subject of commerce. To the *third, answered*, There is no foundation for a distinction in this case; the privileges of foreign bills being in consequence of the late statute extended to inland bills as to every particular.

“ THE LORDS repelled the objection.”

Fol. Dic. v. 2. p. 259. Rem. Dec. v. 1. No 57. p. 109.

* * Edgar's report of this case is No 69. p. 1477. *voce* BILL of EXCHANGE.

* * A similar decision was pronounced, 12th February 1731, Johnston against Strachan, *see* APPENDIX.

1737. June 17.

SIR JOHN SCOT of Ancrum *against* SIR ROBERT DOUGLAS of Glenbervie.

No 510.

PRESCRIPTION being proponed against a bond, by the principal debtor who was sued for payment, the pursuer produced a holograph receipt for a year's

annualrent, granted by the creditor to the cautioner in the bond, and insisted upon the same as a sufficient interruption. *Answered*, A holograph writ does not prove its date against third parties. *Replied*, The defender, in this case, is not a third party in the sense of the brocard. A discharge granted to a cautioner is equally available to the principal, and as a holograph receipt granted to a cautioner is a good proof of payment in every question with the principal; if it prove for him that payment was made, it must prove against him that interruption was made, because this very payment makes interruption. THE LORDS found the prescription interrupted by the holograph discharge. See APPENDIX. *Fol. Dic. v. 2. p. 260.*

No 510.

1743. *January 5.* NORRIS against HEIRS of SIR JOHN WOOD.

No 511.

ROBERT NORRIS pursued the Heir of Sir John Wood for payment of three promissory notes, not holograph, but signed in Ireland, which is there held sufficient. *Alleged*, That they were not probative of their dates; and therefore could not affect the heir, as being presumed on deathbed. *Answered*, That the *lex loci contractus* must be considered; and in England or Ireland such promissory notes would be considered as equivalent to bills of exchange. THE LORDS found the notes not probative of their dates against the heir, and that they could not affect the heritage.

Fol. Dic. v. 4. p. 168. G. Home.

* * * This case is No 27. p. 4466. *voce* FOREIGN.

S E C T. V.

Accounts, Account-books how far Probative.

1631. *January 20.* CREDITORS of BROWN competing.

No 512.

IN a competition of creditors upon a defunct's executry, one having no document for his claim, but an account ingrossed by the debtor in his count-book, the LORDS thought it hard to bring him in *pari passu* with others who had more formal documents, but declared, that if he could prove the delivery