

1743. July 6, 29.

RAMSAY *against* WILLIAM HOGG.

No. 31.

BILL payable in London forty days after date, protested both for not acceptance and not payment, only on the 44th day and no sooner, found not duly negotiated, nor no resource against the indorsers; though the 43d day, which was the last day of grace, was not a post day for Scotland, because there are no days of grace for accepting bills; and found the drawer not bound to prove damage, but that the creditor must prove no damage. *Vide* No. 32. *infra*. *Vide* Cruickshank's Case, No. 49. *infra*. (See DICT. No. 140. p. 1564.)

1743. November 18.

OUCHTERLONY *against* HUNTER of Polmood.

No. 32.

Recourse.—
Notification.

ON the case betwixt George Ouchterlony and Hunter of Polmood, where a great sum was claimed as due to Ouchterlony, for bills paid by him *supra* protest, drawn by Hunter on Mr. Charles Murray of Stanhope, being the issue of a long course of drawing and redrawing, wherein Hunter's concern was, that he accepted Stanhope's draughts from London, which were always paid by Mr Murdoch at Glasgow, on a letter from Ouchterlony, and who took his bills on Charles Murray for the money; we first found, that Hunter was only interposed *dicis causa* and as a name, and that he was not bound to Ouchterlony; but, 8th November, 1743, we altered, and found him bound. *2dly*, We unanimously repelled the objection of usury. *3dly*, As to the point of giving notice, the majority thought there was no difference betwixt a bill simply protested for not acceptance or not payment, and a bill paid *supra* protest, and thought that the drawer was not bound to prove damage, but that the creditors must prove no damage; and therefore we sustained that objection as to the whole bills, except those bills (I think about L.500. or L.600) paid 18th and 23d May 1736. We repelled the defence on Ouchterlony's taking further security from Charles Murray, which gave a forbearance of payment for some months, but still reserved his bills; but where there was writing on the back of the bills cancelled and not legible, we found no recourse on them, and when Mr Murray's money was in Ouchterlony's hands at the payment of any of these bills, sustained that defence also. Upon appeal, the House of Peers in April 1745 found Hunter not bound. (See DICT. No. 141. p. 1567.)