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could be mentioned, shows, that the law does support obligations foreign to the nature of bills. In the present case, the obligation upon the acceptors is constituted in the form of a security, by principal and cautioners, which is as foreign to the proper form of a bill as any thing can well be. If practices of this kind were encouraged, there is no sort of obligation which might not be transmographed into the form of a bill. *2dly*, Supposing the bill not totally void, yet the direction to one as principal, and the rest as cautioners, ought not be regarded, so far as concerns these qualities; and consequently the defenders can only be liable for one fourth of the bill, as if they had all simply accepted the same.

Answered, Bills drawn upon several persons, frequently bear that the effects were delivered to one of them, which constitutes that one principal debtor; and there does not appear to be any difference betwixt a bill of that draught, and a bill in a simple form, without mentioning to whom the value is delivered, but with a direction to one of the persons as principal, and to the others as cautioners. The direction qualifies the acceptance; and if one should accept in case the effects come to his hand, or payable at a further day than that mentioned in the bill, the qualified acceptance is good, and affects the bill: The creditor, by admitting such quality, is understood to consent and is thereby tied down to the qualities. And much more will the acceptor be bound by the terms of the direction, that being a matter purely among themselves, to which they agree by their acceptance adhibit. See 21st July, 1735, William M<sup>c</sup>Whirtor. (Not reported.) See APPENDIX.

And as to the second, answered, That qualified acceptances are ordinary in bills; and why the quality may not be inserted in the direction, as well as subjoined to the acceptance, is hard to conceive.

The Lords repelled the nullity objected to the bill pursued on.

*Fol. Dic. v. 4. p. 296. C. Home, No. 116. p. 328.*

1744. December 15. LORD LYON and SPYNIE *against* ARDOCH.

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Three persons having borrowed a sum, on their joint security, and lent it on a bill payable to them three, it was found two might pursue for the whole.

Ross of Clava being debtor to Gordon of Ardoch in £.100 Sterling, was pressed for the money; on which the Lord Lyon, Sir Robert Monro of Foulis, and Brody of Spynie, borrowed an equal sum, and gave it to Ardoch, on his bill, payable to them three, who, it would seem, were not willing to rely on Clava's security; and the bill was put in Spynie's hands.

Ardoch paid up the annual-rents, and from time to time renewed the bill; but stopping, at length, was pursued on the last granted by him, by Lyon and Spynie, Sir Robert Monro having disclaimed the process.

In this action, the only question was, How far two of the creditors in the bill could pursue for the whole? the defender alleging the obligation was equal to them all, which therefore divided amongst them; and the pursuers contending, that the bill being given for money, which they had jointly borrowed, behoved

to be paid to any of them that demanded it, to relieve them of that contraction.

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The Lords found the pursuers were entitled to the whole contents of the bill.

Act. *H. Home.*Alt. *Hamilton Gordon.*Clerk, *Kilpatrick.**Fol. Dic. v. 4. p. 296. D. Falconer, v. 1. p. 26.*1761. *January 20.*

JAMES GORDON, Merchant in Stromness, *against* JOHN SUTHERLAND, Merchant in Wick.

JOHN SUTHERLAND and John Milliken made a joint purchase, from James Gordon, of rum, to the value of £.83 1s. 3d. for which they granted receipt, and the price was payable in four months thereafter.

This receipt was indorsed to James Stewart, writer in Edinburgh, with an order to pay the price to him.

John Sutherland having come to Edinburgh soon after the term of payment was elapsed, Mr. Stewart took a bill in place of the money, which then ought to have been paid.

This bill was addressed to John Sutherland and John Milliken, merchants in Wick, and was accepted by John Sutherland. The body of the bill and the address were written by John Sutherland; and it appeared that there was added to the address, the words *conjunctly and severally*, in the hand-writing of James Stewart.

John Sutherland alleged, That this addition had been made by James Stewart *ex post facto*; and Stewart insisted, that the addition was made before Sutherland subscribed. Milliken having become insolvent, diligence was raised upon this bill in name of James Gordon, the original creditor to whom it was assigned. A suspension of the charge was obtained by Sutherland; and the Lord Ordinary, upon the 12th February, 1760, “repelled the reasons of suspension, found the letters orderly proceeded, and decerned.”

Pleaded in a reclaiming petition for the suspender: *1mo*, That this addition and superinduction, made to the bill after it was signed by the petitioner, and out of his hands, imports such a *vitium reale* as to render it totally null. *2do*, That if the bill had been accepted by Milliken, as was manifestly intended, the suspender would only have been liable for his half of the contents; and therefore the loss arising through Milliken's supervening bankruptcy, and the charger's neglecting to procure his acceptance of said bill, was no just cause for throwing that loss upon the suspender.

Answered for the charger: *1mo*, It is not true, that the addition was made *ex post facto*. It was made in presence of Sutherland himself, previous to his acceptance; and this he himself had formerly acknowledged, in an answer to a pro-

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Where a bill is addressed to more persons than one, each by his acceptance becomes liable *in solidum*.