

The defenders *contended*, That the indorstation had been fraudulently devised between the drawer and indorsee, in order to preclude their just defences; and they offered a proof of facts, sufficient to shew that this was the case.

*Observed* on the Bench: Though bills of exchange, when in the possession of fair and onerous indorsees, are, like bags of money, liable to no exception arising from the fraud of anterior holders; a collusive transference, such as is here alleged, ought not to be attended with the same privileges.

THE LORDS UNANIMOUSLY allowed the proof here offered.

Lord Ordinary, *Brasfield* A& *Honyman* Alt. *H. Erskine, John Erskine.* Clerk, *Colquhoun-Craigie.* *Fol. Dic. v. 3. p. 83. Fac. Col. No 226. p. 353.*

No 106.

ed between the drawer and indorsee, in order to preclude the acceptor's defences.

1786. November 29.

GAVIN HOGG *against* JOHN FRASER.

GAVIN HOGG, in consequence of an order from Simon Frazer, merchant in Inverness, drew bills for L. 154, on Mr John Frazer, who refused to accept, because the sums in his hands, belonging to Simon Frazer, amounted only to L. 55 : 7 : 2. But he offered, for the accommodation of his correspondent, to honour a bill of exchange for L. 100; which, however, he was not required to do.

Mr Hogg took no farther measures for thirteen months. By this time Simon Frazer had become insolvent, after Mr John Frazer had interposed his credit for him to a considerable amount. An action was then brought by Gavin Hogg, in which, in order to subject Mr Frazer to the payment of L. 55 : 7 : 2, it was

*Pleaded*: The drawing of a bill of exchange, or, what is the same thing, the giving authority to make such a draught, is equal to an irrevocable assignment of those effects of the drawer, which are at the time in the hands of the drawee. *Erskine*, book 3. tit. 2. § 29.

*Answered*: If the pursuer had, within a reasonable time, limited his demand to the sums acknowledged to be due by the drawee, his present claim might have been deemed a just one. But it would be attended with the most pernicious consequences, if, by such unfinished transactions as here occurred, any restraint could be introduced on the freedom of commercial dealings.

THE LORDS sustained the defences, and found the pursuer liable in expenses.

Lord Ordinary, *Huiles.* A& *N. Fergusson.* Alt. *Honyman.* Clerk, *Orme.* *Craigie.* *Fac. Col. No 296. p. 455.*

No 107.

A person was drawn upon for a larger sum than he had in his hands. He refused acceptance. Several months after, the sum which had been in his hands was claimed, at the instance of the holder of the refused bill. The sum was found not to have been attached by him.

1787. December 6.

THOMAS WIGHTMAN *against* DAVID GRAHAM.

ROBERT BURGESS paid a sum of money which was due by his father, and afterwards obtained from David Graham, the creditor, an assignation of the debt with warrandice from fact and deed.

No 108.

The exception of *violence* arising from legal concurs-