

1800. *March 5.* ROBERT ALLAN, *against* JAMES YOUNG.

No. 10.

Action refused on a bill, where the date appeared from inspection to have been vitiated; and the circumstances of the transaction, by which the holder became possessed of it, were of a suspicious nature.

ROBERT ALLAN, in 1795, brought an action against James Young, for payment of a bill for £30. drawn by William Smith, accepted by Young and Thomas Morton, and indorsed by Smith to the pursuer. The bill, when produced in judgment, bore date 10th June 1789.

In defence against this action, Young gave the following statement: In December 1788, Morton and he having had occasion to raise a little money, prevailed on William Smith to draw a bill on them for £30. for the purpose of getting it discounted by the Paisley Bank: This bank having refused to discount it, they resolved to try to get the accommodation which they wanted from the branch of the Bank of Scotland at Kilmarnock; but as the bill bore to be payable at the Paisley Bank-office, it became necessary to draw a new one, which was done accordingly in the same terms, varying only the place of payment: This second bill was discounted, and when it became due, the defender was obliged to retire it, although Morton got the half of the proceeds. The first bill was never used; but the defender having incautiously allowed it to remain in Morton's hands, with Smith the drawer's blank indorsement on it, Morton, with a view to defraud the defender, had caused a special indorsation to be written above Smith's name in favour of Allan, who was his brother-in-law, and who, although he now sued the defender for payment of its contents, had never given any value for it: The bill was originally dated 10th December 1788, but with a view to save it from prescription, it had been altered to its present date; and in order to conceal the alteration, a pen had been drawn over every letter of the bill with the same ink which had been used in altering its date, an operation apparent from inspecting the bill; and the document having been thus vitiated with a fraudulent intention, action cannot be sustained on it; 1st July 1796, Murchie against Macfarlane, No. 55. p. 1458.

The pursuer denied the vitiation; asserted, that he was an onerous indorsee, and contended, that the facts stated by the defender could be established only by his the pursuer's oath.

The Lord Ordinary ordained the pursuer "to give in a condescence, "stating fully and explicitly the whole circumstances of the transaction by "which he obtained right to the bill pursued for, and also all facts and cir- "cumstances respecting the history of the bill before it came into his hands, in "so far as he knows or has been informed of the same."

Allan gave in the following condescence: "I hereby condescend and "say, That according to my information, Messrs. Young and Morton, the ac- "ceptors of the bill sued for, accepted a bill for £30. for behoof of the former "of the two; and, when it fell due, Morton was obliged to retire that bill; "and, on the 10th of June following, (1789), Morton accepted the bill in "question, along with Young, to oblige him, and that it might the more

“ readily be got discounted, obtaining William Smith to draw and indorse the
 “ same ; which bill was thereupon given to Morton that he might turn it into
 “ money and pay himself ; but it being refused to be discounted, Morton held
 “ the bill, who being owing me a considerable sum for rents, he gave the same
 “ to me in part payment of these rents ; whereupon I stopped doing diligence
 “ at my instance against him.”

No. 10.

The Lord Ordinary (14th May 1799) in respect the condescendence “ con-
 “ tains only a general allegiance that the bill pursued for was indorsed to him
 “ for full value, without specifying the value, or giving any account whatever
 “ in terms of the interlocutor of 4th December 1798, of the transaction by which
 “ he obtained right to the said bill ; and having also considered the answers to
 “ the condescendence, with the said bill itself, and reviewed the whole process,
 “ assoilzies the defender James Young from the conclusions of the libel, and
 “ decerns ; finds the defender entitled to his expenses, and allows an account
 “ thereof to be given in.”

On advising a reclaiming petition, with answers, the Court, satisfied that the
 bill was vitiated, and being further of opinion, that Allan had not established
 that he was an onerous and *bonâ fide* indorsee, unanimously adhered to the judge-
 ment of the Lord Ordinary.

Lord Ordinary, *Glenlee*.
 Alt. *Montgomery*.

Act. *Corbet*.
 Clerk, *Menzies*.

R. D.

Fac. Coll. No. 170. p. 388.

1800. November 27.

MRS. HELEN DOUGLAS *against* THE EARL OF DUNMORE.

THE Earl of Dunmore, when Governor of the Bahama Islands, drew a bill
 for £3000. upon the Lords of the Treasury, in favour of Mrs. Helen Douglas,
 for value received, payable thirty days after sight.

Acceptance having been refused, Mrs. Douglas brought an action against his
 Lordship for payment.

The Lord Ordinary gave judgment in her favour for principal, interest and
 expenses.

Before the cause was again advised upon a representation with answers, the
 principal sum in the bill was paid at the Treasury, so that the only question re-
 maining related to interest.

The Lord Ordinary having adhered to his former judgment, the Earl in a
 reclaiming petition,

Pleaded : The bill was drawn by the petitioner in his public capacity, and en-
 titled the creditor to payment from the Treasury, but without recourse against

No. 11.

Where a pub-
 lic officer
 draws a bill
 on the Lords
 of the Treas-
 ury, for
 money ad-
 vanced for the
 public service,
 he incurs the
 usual obliga-
 tion of draw-
 er, if the bill
 be not duly
 accepted and
 paid.