No 87.

Campbell ſuſpends, and *alleges* compenſation againſt Gordon, the indorſer, in as far as he entered into a contract with George Clerk, one of the acceptors, for a quantity of coals to be furniſhed to him at a certain price, which muſt compenſe at leaſt for George Clerk's half of the bill.

It was *answered*, No compenſation is receivable againſt a bill accepted, payable to the preſenter, or his order; for commerce doth require that ſuch bills ſhould paſs from hand to hand, as an effectual and unqueſtionable ſecurity; and, if there had been any exception, the bill ought not to have been accepted.

It was *replied*, That compenſation is equivalent to payment, and competent againſt all obligations whatſomever; and the bill might have been lawfully accepted in contemplation of that exception, which is no prejudice to commerce; ſeeing it is a defence authoriſed by law; and, whatever might be alleged in a foreign bill, yet the law of this nation ought to regulate inland precepts.

It was *duplied*, There is neither law nor reaſon to admit compenſation upon the debt of an indorſer, in caſe of an accepted bill; for ſuch bills being drawn for ready payment, if they be not accepted without all quality and condition, it is free to take a proteſt, and recur upon the drawer, who will be liable to make them good; and, if the ſuſpender had not accepted, Gordon would have recurred, and got his money; and the ſuſpender having accepted the bill, payable to Gordon, or his order, it were againſt all reaſon to obtrude Gordon's debt to the charger, who relied upon the accepted bill. It is true, if the ſuſpender had any ground of debt againſt the charger, compenſation would be received; or if Gordon had purſued the ſuſpender, as debtor to the drawer, in that caſe he might have compenſed Gordon.

'THE LORDS repelled the reaſon of compenſation; and found, that a bill accepted, payable to the preſenter, or his order, could not be compenſed upon the debt of the indorſer.' *See* COMPENSATION.

Dalrymple, No 13. p. 16.

1706. *February* 13. GAVIN PLUMBER *againſt* ARCHIBALD HOUSTON.

No 88.
Betwixt the the drawer and acceptor themſelves, where onerous purchaſers are not concerned, all objections are relevant *hinc inde*, as in other contracts.

JAMES HOUSTON draws a bill on Archibald his brother for L. 22 Sterling, payable to Gavin Plumber. Archibald accepts the bill; but afterwards failing in payment, it is proteſted againſt him, and being regiſtrated, he is charged thereon; who ſuſpends, on this reaſon, That though the ground of the charge be an accepted bill, yet he offered to prove, by the charger's oath, that the true cauſe of it was the price of the fourth part of a ſhip ſold by the ſaid Gavin to him; and that when he came to take poſſeſſion of the ſame, he was debarred by bottomries contracted upon it before the ſale; and ſo Mr Plumber can never crave the price till he deliver the thing ſold, that being *causa data causa non secuta*. *Answered*, Whatever be the cauſe of the bill, there can be no inquiry after acceptance, ſuch bills being as current as lying money beſide a merchant or factor;

No 88.

and to admit ſuch allegeances would be ſuch an interruption and deſtruction to trade, that it would confound all commerce; and that, by the laws anent bills, no exception, though it were compenſation, is admitted againſt their currency. *Answered*, This may hold as to foreign bills, but this is an inland bill; and though the act of Parliament 1695 communicates to them the privilege of ſummary charging, yet it would be mighty inconvenient to allow them all its other privileges, ſeeing much debt is now tranſacted by bills, without any relation to trade. THE LORDS obſerving the bill did not bear value received, the queſtion aroſe, whether that was virtually implied therein, though not mentioned? It was *contended*, ſuch bills were no more than mandates *in rem ſuam*. On the contrary, it was *alleged*, That, by the conſtant track of deciſions, bills, though wanting that, yet conſequentially imported them to be onerous; as was found in the caſe of Meikiſon againſt Graham, and Freebairn againſt Guidſire*, obſerved by Mr Forbes, on Bills of Exchange, p. 49. § 14. † unleſs the party prove *ſcripto vel juramento*, that value was not received for it, neither in money nor goods. THE LORDS thought it might be a ſtop to the currency of bills, if they were once made over and indorſed to ſtrangers or third parties, to offer to prove their cauſe; but here it is betwixt the firſt creditor in the bill and the acceptor, and againſt him it ſeemed relevant to prove its cauſe by his oath; and therefore they ordained Gavin Plumber to depone, if it was for the vendition of the fourth part of a ſhip; and that being acknowledged, then allowed him to prove he was debarred by preferable debts affecting the ſame. It were deſirable, that this point were ſo regulate by an act of Parliament, that no exception whatſoever be receiveable againſt bills, except falſehood and payment only. *See* No 93. p. 1505.

Fol. Dic. v. 1. *p.* 98. *Fountainhall, v.* 2. *p.* 327.

*** Forbes reports the ſame caſe:

ARCHIBALD HOUSTON being charged at the inſtance of Gavin Plummer, for payment of an accepted bill drawn upon him by his brother Mr James, payable to the charger; he ſuſpended, upon this reaſon, That he offered to prove, by the charger's oath, that the bill was granted in payment of the fourth part of a ſhip ſold by him to the drawer, which ſale is not made effectual by reaſon of prior bottomries affecting the ſhip, and therefore the charger cannot ſeek payment of the bill.

THE LORDS thought the allowing to prove the exception of *causa data non secuta*, againſt a ſtranger or third party, to whom a bill is indorſed, might prove a ſtop to the neceſſary courſe of bills. But the queſtion here being betwixt the firſt creditor in the bill, and the acceptor, they found it relevant for the ſuſpender to prove the cauſe of it by the charger's oath: And he acknowledging that it was granted for the vendition of the fourth part of a ſhip; allowed the ſuſpender to prove he was debarred by preferable debts affecting the ſame.

Forbes, p. 97.

* *See* OATH of PARTY.

† Edition 1703.