

1762. July 21. GORDON against RAINING.

THE point had occurred before Lord Colston, Gordon against Raining; when his Lordship, in conformity to the decision, *Turnbull* against *Tudhome*, 18th June 1748, observed by Falc., gave the same opinion. Parties reclaimed. I am not informed how it ended. This was in part of a writer's account.

1775. February 17. M'KENNAN against GARRIOCH.

WHETHER an indorsee to a bill indorsed *in security* ought to be liable in negotiation has been disputed. Groset, son to the collector at Alloa, had remitted a bill accepted by Drummond to the Receiver-general, *inclosed in a letter, bearing, That the bill* was to be in his hands as a deposit till the money was paid. The Receiver-general did not follow out the rules of negotiation, and afterwards contended that he was not liable to do so; as the bill was not indorsed to him in payment, but merely as a deposit. The Lords (February 1762,) sustained the defences, and assolied; but, upon an appeal, the judgment was reversed; and the Receiver-general found liable for the sum in the bill, (17th March 1763.)

In the above case, Groset against Murray, the reversal proceeded upon these two special points:—*first*, That the commissioners of the customs, in their instructions, had directed that bills transmitted by the collectors to the Receiver-general, should be negotiated; and that accordingly an officer, with a salary, was appointed for that purpose. *Secondly*, The Receiver-general, in order to obtain a writ of extent, had deponed, before a Baron of Exchequer, that the bill indorsed was a Government debt, and had thereupon obtained a writ to that purpose.

In the case *M'Kennon* against *Garrloch*, 1st February 1775, the point was held as established, *viz.* that an indorsee in security was not liable in negotiation.

THE Lords found, “That a bill drawn on a debtor, payable to a third party, and protested for not-acceptance, is equivalent to an intimated assignation, and preferable to an after arrestment by another creditor.”

Same decision pronounced, 4th March 1778, *John Spottiswood, Esq.* against *M'Neil of Colonsay*.

They decided upon the same principles, *M'Leod* against *Crichton*, 14th January 1779. In this case, the bill was twice presented to the person, *viz.* Sir William Forbes and Company, upon whom drawn; first for not-acceptance,—next for not-payment. At the time of the protest for not acceptance, they had

no money, in their hands, of the drawer ; but, at the time of the protest for non-payment, they had received a bill, payable some short time after. The Lords seemed to hold even the first presentment sufficient to prefer the holder, and that it drew back. Indeed, in this case, there was another circumstance, that the other bill was not drawn upon Sir William Forbes and Company, but only made payable at their house. The Lords held this *per se* noways equivalent to an assignation.

There seems to be three different kinds of bills ; bills for instant value,—bills to account,—bills in security.

Indorsees to the first are onerous indorsees, if value is given ; and indorsees to the second are onerous indorsees if value is due ; but indorsees to the last are not onerous indorsees,—they are not entitled to the privileges of onerous indorsees, nor are they liable to negotiate.

It has been often doubted, whether an indorsee value in account is an onerous indorsee, and entitled to the privileges of an onerous indorsee ; *22d February 1775, Messrs Harris against Crosbie* ; the Lords found that he was so.

BRIEVE OF DIVISION.

1772. *February 22.* CATHCART OF CARBISTON *against* JAMES ROCHEAD OF INVERLEITH.

THE estates of Inverleith and Darnchester having been held *pro indiviso* by four heirs-portioners and those deriving right from them ; James Rothead of Inverleith, as in right of these four heirs-portioners, took out a brieve from Chancery for dividing the lands of Inverleith, directed to the sheriff of Edinburgh, within whose jurisdiction Inverleith lies, (see *Heirs-Portioners.*) Mr Cathcart of Carbiston, in right of the other fourth, not choosing that the division of Inverleith should proceed before the sheriff, gave in a bill to the Ordinary on the Bills for a warrant to the Chancery to issue brieves for dividing both Inverleith and Darnchester, the last lying in Berwickshire, directed to the macers of Session, as sheriffs in that part. The bill passed of course, no notice of the application having been given to Mr Rothead.

In consequence of this warrant, Mr Cathcart took out brieves of division