

as would have satisfied it. But the Drawer was made to assign to the Creditor in the Precept the first and readiest of the Debentures due to him by the Government for the said Regiment, for satisfying the Sum in the Precept yet resting unpaid 20 Decemb. 1711 E. Levin contra E. Glencairn. But the Chief is not denied to the Creditor in a Bill against those that are liable Subsidiarie for such Omision to present, or protest the Bill in due Time, or to advise the Drawer or concerning the Dishonour of it if the Person drawn upon or Acceptor continue in indirc. Credit; and they can show no Prejudice they sustain by the foresaid Neglect. Because nemo debet locupletari cum alterius pectura sine causa 25 July 1699 Yule contra Richardson. 28 June 1706 Swinlon contra Lady Craigmiller In Ory Chap. 19. n. 18. 19. Jo. Voet Comm. in ff. Lib. 22. Tit. 2. n. 6. 7. Morus Aug. 24. Again, a Creditor's receiving for his further Security a Precept upon the Debtor's Chattels, or any other Person, doth not oblige the Creditor to the Formality of presenting intimating and protesting. Because such Precepts <sup>in</sup> Security are not in the Matter of Exchange.

Trade betwixt Merchants 27 July 1666 E. Newburgh contra Stewart.

A Bill of Exchange whether forein (Act 20. Par. 3. Ch. 2.) or inland (Act 36. Sess. 6. Par. K. W.) is registrable within 6 Months after the Date of the Bill, against the Drawer or Indorser in case of a Protest for not Acceptance or after falling due thereof against the Acceptor, in case of a Protest for not Payment: That Hornings or a Charge of 6 Days and other summary Writs as Caption Arrestment Pounding &c. may pass thereon for Payment of the principal Sum, Exchange if contained in the Bill, with Annulment from the Date thereof, in case of not Acceptance, and from the Time it falls due, in case of Acceptance and not Payment. Tho' the Possessor of a Bill be not obliged to seek Payment at any other Place than where the same is payable L. 9. ff. de eo quod cert. loc. Scaccia §. 2. Gloss. 5. n. 194. 210. Yet he may in case of Not Acceptance or Not Payment, proceed in Diligence against the Drawer or Acceptor respective or his Goods, wherever he can find them L. 1. ff. de eo quod cert. loc. L. 19. §. 1. ff. de iudic. By the Custom abroad, the Creditor of a Bill that is suffered to be protested for Not Acceptance, cannot recur by Action and Diligence against the Drawer or Indorser for Payment before the Term, unless he be avergens ad inopiam: Only the Drawer or Indorser may be obliged to give sufficient Security for Payment at the Day and Place appointed, with Charges and Re-exchange. In case of Failure to be valued according to the Course then. But by our Law when a Bill is protested for not Acceptance, the Possessor has immediate Recourse by Hornings against the Drawer or Indorser even before the Term of Payment. For if it were otherwise, the Creditor might sometimes (as when his Bill is payable 9 or 10 Months after Date) be debarred from the common Benefit of Summary Diligence, which is competent only within 6 Months. And perhaps it was in Expectation that the Bill

Bill would be accepted by such a one, that the Creditor consented to allow a longer Term for Payment; Whereof being disappointed by the Refusal to accept, it were hard to force him to wait the Term, seeing thereby he might run a Risk of losing his Money. The Creditor in a Bill protested for not Acceptance, has also Action against him upon whom it was drawn, if he unjustly refused to accept having Provisions in his Hand Stair Lib. 1. Tit. 11. §. 7. Thus a Person who suffered a Bill drawn upon him to be protested for not Acceptance, was found liable to the Possessor in quantum he had of the Drawers Effects at protesting of the Bill, and to be in mala fide to pay thereafter to the Drawer 9 Decemb. 1712 Jorin contra Anderson. But the protesting a Bill doth not suffice to oblige the Possessor to Effects remitted afterwards by the Drawer to the Person drawn upon, and arrested by the Drawers Creditors: About the Receiver of the Money had Advice from the Drawer, to make Payment to him, which Letter of Advice did not transfer the Property of the Money from the Drawer but the same notwithstanding remained his, and affectable by his Creditors Creditors thereof 1697 Inglis and Foulis contra Mackie of Calgoun. To gain notwithstanding the Advice from the Creditor in a Bill to him it was payable to under Trust, concerning the Application of a Part of the Money toward Satisfaction of a Debt due to a third Person, not being intimated to him, the Property of that Money was found to remain with him who sent the Advice, and arrestable by his Creditors 1706 L. Ross contra Gray of Newtown. An accepted Bill being protested for not Payment is registrable in Order to Hornings and other Diligence against the Acceptor, whom the Possessor must first discuss: And that being done without recovering Payment, he has only an ordinary Action for making his Money effectual against the Drawer and Indorser, who may be pursued jointly and severally in Solidum. Herein our Law recedes from the Custom abroad, which makes Drawer Indorser and Acceptor answerable to the Creditor in the Bill without any previous Discussion of the Acceptor. The Reason why it is otherwise in Scotland, is because the Acceptor is considered as principal Debtor, from the first Design of the Parties to have the Bill <sup>paid</sup> by him; the Drawer and Indorser being only so many Mandants, much the same in Law as Cautioners, who regularly are liable only Subsidiarie after discussing of the Principal. And if summary immediate Diligence were allowed against the Drawer or Indorser, they could not make the most ordinary Defence and Exception against the Possessor, viz that he suffered the Acceptor to break without taking due Diligence, but by Way of Suspension which would be both expensive and troublesome.

If said that Summary Diligence by Hornings &c. may pass upon any