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0091

FULL AND PRACTICAL
T R E A T I S E
U P O N
BILLS OF EXCHANGE.

TOGETHER WITH

An ACCOUNT of the NATURE of the
BANK of AMSTERDAM,
And how PAYMENTS are made and received in it, &c.

B Y

WILLIAM STEVENSON,

Some time merchant in *Rotterdam*,

And present teacher of book-keeping, authorized by
act of council of the city of *Edinburgh*.

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TO THE RIGHT HONOURABLE
N E A L
Earl of ROSEBERRY,
Viscount PRIMROSE,
Lord DALMENIE, &c.

THE FOLLOWING TREATISE IS
PUT UNDER HIS LORDSHIP'S PRO-
TECTION AND PATRONAGE, AND WITH
THE HIGHEST ESTEEM INSCRIBED TO
HIM, BY HIS LORDSHIP'S

MOST OBLIGED

AND MOST DEVOTED

HUMBLE SERVANT,

WILL. STEVENSON.

P R E F A C E

When I first set about teaching of book-keeping, I found the greatest difficulty I had was, to make my scholars understand the nature of bills of exchange; and consequently, when transactions occurred in which bills were introduced, they were at a loss to find the proper debtor and creditor: for which reason, I found it necessary to compose a set of discourses upon that subject, which I rehearsed weekly in my school, at a certain hour set apart for that purpose.

This practice had the desired effect, both by instructing and pleasing my students; insomuch that I have been very frequently solicited, both by them and several others of my friends, who had been present at those discourses, to publish them: but as speaking in a school to one's own students, and writing to the public, are different talents, for the last of which I never looked upon myself to be sufficiently qualified, I endeavoured to shift off these solicitations for many years.

Another

Another reason was, that these discourses being calculated for delivering weekly, they were lengthened by introductions, conclusions, and repetitions of what had been said in former ones; which would have made a sorry appearance in print, and only galled the ears of the readers to no purpose.

A few years ago, I was persuaded to publish my treatise upon book-keeping, which I hope, has given tolerable satisfaction to those who understand any thing of that science, and I then intended to have annexed this to it, after cutting off all the superfluities of weekly discourses, &c. but was disappointed by reasons which it is needless to trouble the readers with.

I have now reduced them to a small volume, and published it by itself, as being more convenient for reading, and will be probably more universally demanded, than if it had been annexed to the book-keeping; as there is scarce a man who is engaged in any kind of business whatever, but will one time or other have occasion for it, whether gentleman, merchant, writer or tradesman, as all of them must have
occasion

occasion to draw and accept bills some time or other of their life.

I say particularly to draw, because that is what I find several persons of all designations most defective in, and especially in the last clause, by not expressing the value distinctly, which is of very great consequence in many cases; and therefore I have insisted very fully upon that head in the treatise itself, which renders it unnecessary to say any more about it in this place.

I know that several authors have wrote something upon this subject: but then some of them have only touched it very superficially, and others (such as our countryman Mr Forbes) have laboured out the law part, without noticing much of the practice; whereas, I have endeavoured to make it so practical, that by reading the book, one may see the whole commerce of exchange traced from its original, and reduced to a practical plain system, applicable to all kind of business, which was my sole intention; and how far I have succeeded in that, the public must be judges.

My own practice for many years furnished me with most of the materials; and where I have had recourse to authors, I took care always to make use of the best, and most experienced in trade; so that their authority may be depended upon.

That famous bank of Amsterdam almost every one has heard of, and yet but few understand the nature of it, except merchants who have had dealings in it: and therefore I thought it might be of some use to explain the nature of it, so far as I know; and to shew how payments are made and received in it, which I know by my own practice: but the particular management of it, with regard to the profits, &c. I neither know, nor could ever learn, either by practice or reading, that being kept a profound secret; so my readers must be satisfied with what I have told them, until they can find out better information somewhere else.

I wish from my heart the public may have benefit and satisfaction, which is my intention, and then I shall think my labour bestowed to good purpose.

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A
T R E A T I S E
O F
E X C H A N G E, &c.

IT is observable, that merchants and trading people make use of some words in commerce, in a limited or restricted sense, which otherways might have a more extensive meaning,

THUS *exchange*, taken in its full sense, may be properly applied to all kind of commerce, so often as we part with one thing to take another in its place, which is nothing else but what is commonly called *truck* or *barter*: a commerce almost as ancient as the world itself; for no sooner do we read that *Abel* was a keeper of sheep, and that *Cain* was a tiller of ground (a), than we will naturally
A conceive,

(a) Gen. 4. 2.

conceive, that the one exchanged part of his flocks with the other for the fruits of the ground, in order that they might thereby mutually sustain each the other.

EXCHANGE, taken in its restricted sense, is a commerce in money, or the exchanging one species of money for another.

OF this there are two kinds; first, that of exchanging one kind of ready money for another at one and the same place, which is called *minute* or *manual exchange* (a). This is the most antient sort of exchange, and what the *Jews*, both in *Holland*, *England*, and other places, commonly practise to this day; which exchangers, called by the antient authors *collybistae*, are particularly mentioned by *Cicero* (*orat. 5. cont. Verrem*), and are in our language called *money-changers*.

Minute or manual exchange.

THAT

(a) Primum genus cambii est, de pecunia praesenti cum pecunia praesenti, quo ideo solet fieri in uno eodemque loco, et regulariter pro non magna summa, et ideo vocant *cambium minutum*, seu *manuale*.—*Saccia de com.*

THAT this sort of exchange is of great antiquity appears, as well by observation of the *Hebrew* customs, as of these of the *Romans*; and it seems to have taken its original, amongst the former, from the *Mosaic* institution, as we read *Exod. 30. 31.* where we shall find, that, upon the first of the month *Adar*, proclamation was made throughout all *Israel*, that the people should provide their half shekels; which were yearly paid toward the service of the temple upon the twenty fifth of *Adar*, according to the commandment of GOD. Then they brought tables into the temple, (*i. e.* into the outward court, where the people stood); on these tables lay all sorts of coins, to furnish those who wanted half shekels for their offerings, or who wanted lesser pieces of money in their payment for oxen, sheep, doves and the like, which stood there in readiness, in the same court, to be sold for sacrifices: but this supply and furnishing the people from those tables was not without an exchange, or allowance for other money,

A 2 ney,

ney, or other things in lieu of money, and that upon advantage; and as the *Jews* are naturally very covetous, so by degrees they came to abuse this custom, which at first was designed for an ease and conveniency to the people, and screwed up their profits to such a pitch, that it became an extortion, which is the reason that our SAVIOUR, in his days, complained that the house of prayer was turned into a den of thieves, and therefore he overthrew their tables, and cast them out of the temple, as you may read in the gospel of *St Matth.* chap. 21. ver. 12. *et. seq.*

Real exchange.

THE second kind of exchange is called *real exchange*, or that of ready money paid in one place, for an equivalent sum to be repaid in another place, by virtue of a certain writing or instrument commonly known by the name of a BILL OF EXCHANGE (a). Those who deal much in this

(a) Secundum genus cambii est, quod fit de pecunia praesenti cum pecunia absenti; ideoque cum fiat de loco ad locum, fit per literas, et hinc vocatur *per literas*.—*Scaccia*.

this kind of commerce are called *bankers*, who are a set of people that reside in trading towns, dealing altogether in money and exchange, and are so called from the *Italian* word *banca*, signifying a kind of table or bank; because formerly those who dealt after that manner were accustomed to sit in the public market places with such tables or banks for computing their money and writing their bills of exchange; and because when such dealers had the misfortune of failing in their credit, their tables were broken, either out of contempt, if they were suspected of trading unfairly, or in order to get new ones and be re-established if they were found honest, they were called *bankrupts* (a), which name is in use to this day.

Bankrupts

A third kind of exchange was called *feigned or counterfeit*, which is nothing else, but that, when one desires to borrow a piece of money, he gives a bill to a banker, which is remitted to a certain place.

Feigned or counterfeit exchange.

(a) Quasi habentes bancam ruptam.

place agreed on, and returned with protest, in order to draw from the borrower extravagant interest, re-exchange and damages, &c.

Dry exchange.

A FOURTH kind was called *dry exchange*, which differs from the last, only in this, that here there is no money immediately advanced, but only a longer time procured for paying a sum which was due, and then it is managed in the same manner as the other.

THESE two last were found so injurious to the public, and attended with such extravagant charges and usury, that they were expressly prohibited in *England* by act of parliament in the reign of king Henry VII, they were reprobated and condemned *anno 1564* and *1571* by the bulls of two different popes, and are now in disuse through all Europe.

Real exchange.

THESE two then being entirely laid aside, I proceed to the second kind mentioned, *viz. real exchange*, or that by which money

money is paid in one place, for an equivalent to be received in another, by virtue of bills of exchange. And,

1st, As to its original, it is certain that it was not known by the antients in the manner we now practise it, but was introduced by necessity, for the convenience and public benefit of mankind: for had it been known by the antients, certainly some notice would have been taken of it in the *Roman law*; whereas there is not the least mention of it there, in the terms, and for the purposes it is now made use of, Its original.

THE precise time when, as well as the names of the persons by whom, this manner of exchanging by bills from one place to another was invented, is a little uncertain; some authors attributing it to the banishment of the *Jews* from *France*, during the reigns of *Dagobert I.* in 640, of *Philip Aug.* in 1181, and of *Philip the Long* in 1316; which *Jews* having retired into *Lombardy*, and being

being deprived of the ordinary means of carrying their money and effects along with them, fell upon this method of writing short open missives, by merchants, and others travelling into *France*, who, finding it more convenient, were glad to pay in the value, and receive the equivalent when they came there.

DE RUBIS, in his history of the city of *Lyons*, attributes it to the *Florentines*, who, being banished from their country by the *Gibelines*, settled in *France*, where they began the commerce of exchange, to retire their effects from their own country.

THOSE who follow this last opinion alledge in favour of it, 1st, That the other leaves us at an uncertainty of above 600 years of the time, *viz.* whether it was invented in the 640 or in 1316. 2^{dly}, That the *Jews* were banished for punishment of their rapines and villainies, by which they had drawn upon themselves the hatred of the whole nation

tion, and consequently it is not to be presumed that any would take upon them the charge of their effects, and keep up correspondence with them, in opposition to an express law.

To the first of these it may be answered, That tho' it was first invented in 640, yet there is no inconsistency in saying it was again renewed and practised in 1181 and 1316: and I choose the rather to favour this opinion, because I have observed that, generally speaking, the *Jews* to this day practise this kind of commerce most, and understand it best of any people in the world.

As to the other, I have no great difficulty to imagine that they would find abundance of chaps to take the charge of their effects, seeing (as the saying is) *one rogue always knows another*; besides that the profit they might make, by having them deposited in their hands, would be a strong inducement to some interested persons to accept of the offer,

B

notwith-

notwithstanding of the law made against it: however, be that as it will, it is of no great importance to our present purpose; only we may conclude, from what has been said, that it is a modern invention, and was unknown by the ancients: wherefore I shall proceed, in the next place, to consider the nature of an exchange-contract from one place to another, by bills.

Nature of an exchange-contract from one place to another, by bills.

BOTH divines and lawyers have given several opinions about exchange, which those that are curious may see in *Seaccia de commer.* and in other books on that subject: but as my business here is chiefly intended for the practical part, I shall only give that which seemeth to be most generally received, and to have the best reasons assigned for it, which is, that *real exchange* from one place to another is a *bonae fidei* contract, made for the mutual benefit of both parties, and is properly a contract of buying and selling, as well as those contracts which are made in the disposing of any transferable

transferable stock; for the drawer of a bill of exchange actually sells and transfers to another the credit which he hath with that person upon whom he draws: so that a vendition, or contract of selling, and an exchange-contract, are the same with respect to the manner; and the only difference seems to be, with respect to the matter, which in exchange is always money: but I shall endeavour to show, that it has all the properties of a contract of vendition, and that the matter or subject of exchange is capable of being bought and sold.

1st, WHATEVER (a) is capable of augmentation or diminution of its price may be sold; but money, which is the subject of exchange, may be either augmented or diminished in its price; therefore it may be bought and sold.

2^{dly}, BECAUSE some pieces of money
B 2 are

(a) Quia pecuniae estimatio crescit et decrescit; sed ea, quorum pretium crescit et decrescit, sunt vendibilia, ut experientia patet. *Seaccia.*

are worth more in one place than in another, tho' of the same weight and standard; whence it is that the gold ducat of Venice passes current for more than the Roman ducat: and the same may be said of several other species: and consequently, if they have different values, or courses, they are capable of being bought and sold.

3dly, MONEY is included under the general term of moveable effects; but moveable effects may be, and daily are, bought and sold; therefore money, as a moveable, is capable of being sold.

4thly, WHATEVER (a) can be exchanged may also be sold; but one species of money may be (and daily is) exchanged for another; therefore money may be sold.

5thly, WHATEVER can be estimated at a certain price in silver may be sold, seeing

(a) Quicquid est commutabile est etiam vendibile, sed pecunia est commutabilis cum pecunia, ergo est vendibilis.

ing. the use of silver was introduced on purpose to serve for the price and measure of all things saleable; but one species of money is estimated according to the proportion it bears to another; and therefore it may be bought and sold.

6thly, ALL moveable effects have a double value, the one intrinsic, and the other extrinsic, and it is from this double value that the justness of the price is taken at which any thing ought to be sold; but every body knows that this double value is to be found in money, and therefore it may be sold, as well as any other moveable.

7thly, AN exchange-contract is properly a transfer made by the drawer of that credit he had from the person upon whom he draws; but it is certain, that all transferable credits are bought and sold daily; and consequently a bill of exchange is a contract of buying and selling.

I KNOW

I KNOW that several lawyers have been of opinion that exchange is not properly a contract of buying and selling, perhaps because they could not form to themselves an idea of money as a saleable commodity. But if we consider that *barter*, or the exchanging of one thing for another, is the general term, or (if you please) the supreme genus, of which buying and selling, or the giving away any saleable commodity for money is only a species; and again, that *real exchange*, (of which I am now treating), or the giving away the money of one place for that of another, is only a species of this last: I say, if we take it in this view, as certainly we ought, there remains no more doubt, but that *real exchange*, by bills from one place to another, is a contract of buying and selling: and this is likewise the common notion of it among all trading persons.

The usefulness of it.

EXCHANGE is a commerce so very commodious for all sorts of trading people, whether bankers, merchants, or others, that

that it would be very hard, if not next to an impossibility, to carry on trade without it: for if one has money in a place different from that where he resides, or if he has occasion to carry or send money from the place of his own residence to another, in both cases messengers, porters, or some other such means must be fallen upon for its transportation, whether it be by sea or land, the inconveniencies of which are so many, and so obvious at first view, that I judge it altogether needless to insist upon them. Besides, there are certain profits arising from the drawing and remitting bills of exchange, which make it a considerable branch of trade: and this will plainly appear if we consider, that a most frugal people, and who have for many ages been esteemed the most experienced in trade of any in *Europe*, were the first who, without any manner of necessity, and purely for the sake of the commerce, made use of it in the shape in which it is now known, and spread it over the rest of *Europe*

Europe by the means of their general correspondence.

I MEAN those of *Amsterdam*, to which city it was first brought by the *Italians* and *Jews*, great numbers of whom still reside in that place, and are the most opulent and noted bankers in the world.

To prin- ces and crowned heads.

THE *European* princes and powers have so far experienced the benefit and conveniency of exchange, that they have favoured it extremely, by granting those who deal in it many great privileges, and allotting them certain public places in their most remarkable cities, for the more conveniently and regularly carrying on their negotiations of that kind; which places take their name from the commerce, and are called *the exchange*.

By means of this commerce they prevent the exportation of gold and silver, as well as of jewels and precious stones, which formerly merchants were accustomed to carry from their own into foreign countries

countries (because of their being easily exported) and sold them, in order to purchase, or else exchanged them with such commodities as they had occasion for, which was a very considerable disadvantage to the country from which they were brought.

ALL these reasons have rendered the use of it universal: and it is become so very necessary, that one may venture to say, that, without bills of exchange, it would be next to an impossibility to carry on either trade, or a great part of other affairs, with any manner of advantage or regularity; and it is by the means of bills of exchange that princes and great ones of the world transact their business; which, I believe, is sufficiently evident to every one who hath the least experience.

It is become universal.

I HOPE I have now sufficiently shewn both the original and usefulness of *real exchange*; and that it is a contract of vendition, or the buying and selling the money of one city or country for that

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of another; which may be done in the following manner, viz. 1st, At so much per cent. advance; 2dly, At so much per cent. discount; 3dly, At par.

THE exchange is said to be at so much Advance. per cent. advance, when there is more paid for the bill at the place where it is drawn than is to be paid and received at the place where it is payable.

IT is said to be at so much per cent. Discount. discount, when there is less paid for the bill at the place where it is drawn, than is to be paid at the place where it falls due.

THE exchange is said to be at par. Par. when precisely the same sum is paid at the place where the bill is drawn, that is to be paid and received at the place where it falls due.

THIS is easily understood when the species of the two cities or countries are precisely the same, which is the case betwixt

twixt South and North Britain; and our only difficulty will be to know, how the exchange is when the species of the two countries where the bill is dated and where it is payable are of a different standard, as, for instance, betwixt Britain and Holland.

IN this case we must first compare the two different standards with respect to their intrinsic value in silver, which is called the par; and this being known, we have no difficulty to determine how the exchange goes betwixt these two countries, as well as if both the species were the same.

THUS, supposing the Dutch guilder piece (a) to be worth twenty one pence farthing in silver, which I believe is as near a computation as hath as yet been made, then I say, if I pay twenty two pence for my C 2 guilder,

(a) Sir Isaac Newton's table of the essays, weights and values of foreign silver and gold coins, makes the Dutch guilder intrinsically not worth quite so much as I have done; but that makes no alteration with respect to my doctrine.

guilder, the exchange is at advance; if I pay but twenty one pence, then it is at discount; but if I pay precisely twenty one pence farthing, it is at *par*; and so of all other species through the trading world: the *pars* of which all those who deal much in exchange ought to make it their business to know, either by practice or by reading of books upon that subject, of which there are several to be found.

FROM what has been said there will naturally arise a question necessary to be answered before we proceed further, and that is,

How cometh the exchange to vary from time to time? or, in other words, how cometh a *Dutch* guilder, which is always the same specific piece of money in the country where it is current, to be worth more or less at one time than another here in *Britain*.

Reason of
the rising
and falling
of the ex-
change.

To answer this question we must consider

consider that it proceeds from the balance of trade, when there is more or less exported or imported to or from any one country to another, which I thus illustrate.

LET us suppose, for instance, that this year *Britain* has exported of their product and manufactures to *Holland* to the extent of one hundred thousand pounds, and have imported from them to the extent of two hundred thousand pounds; then the balance of trade is against *Britain*, because she can only pay to *Holland* one half of her debt by her export, and the other half, to keep her credit, must be paid by bills of exchange, which must be purchased from bankers, who by this means, finding a great demand, keep up their price, and sell their bills at as much advance as they can make.

IF, on the other hand, *Britain* should export to *Holland*, of her product and manufactures, to the extent of two hundred

dred thousand pounds, and import from thence only to the extent of one hundred thousand pounds, then the balance of trade will be in favour of *Britain*; and as numbers of people can draw upon *Holland*, to retire their money from thence, bills will be found in great plenty, and consequently must go at discount.

FROM what has been said above I shall only make the following two remarks.

Export beneficial to any country.

1. THAT it is the benefit of every country to export to foreign countries as much of their own product and manufactures as they can, and to import from these countries as little as possible.

The rate of exchange the surest way to know the balance of trade.

2. IF we want at any time to know how the balance of trade lies betwixt our own country and any other, let us consult the exchange, which is the surest mark we can have, and what every one can have access to, in any trading city; whereas otherways those who are curious

curious would be obliged to put themselves to the trouble and expence of consulting all the custom-houses through a whole nation, which is an insuperable task, and, when done, is not so near the truth, as by consulting the exchange,

I PROCEED, in the next place, to give some directions for forming; or, as it is commonly called, drawing a bill of exchange. And though we see different persons follow different methods, which in the main is a matter of no great moment, provided all the essentials of a bill be observed, I shall here shew what is absolutely necessary to make a complete bill of exchange, which I reduce to seven articles: although (as I just now hinted) it is not very material in what order these be inserted, provided none of them are omitted, yet I chuse to give them in the order most commonly observed by trading persons of the best character, and most experience in business, which ought certainly to be the rule in this as well as in all other contracts

Directions for drawing bills.

tracts commonly made use of in commerce.

1st, THERE is the date, naming the place from which the bill is drawn,

2dly, THE term of payment.

3dly, THE name of the person in whose favour it is drawn.

4thly, THE sum to be paid,

5thly, THE value received, and from whom.

6thly, THE signature or subscription of the drawer; and,

7thly, THE address, or name and designation of the person who ought to pay the contents, or (as we commonly say) upon whom the bill is drawn.

The date. 1st, I SAY the date, in which there is no manner of difficulty, that being placed

eed at the top of the paper, before we begin to form the body of the bill, after the same manner as in missive letters, or any other writing, which every one knows who has had but the least concern in business. Only I would have you observe here, before we begin to the body of the bill, that most experienced traders likewise set down upon the top of the paper (to the left hand of the date) the sum in figures, which is to be mentioned in the body of the bill in letters at full length: but this I do not mention as an essential part of a bill, but seems only to have been introduced for the conveniency of the parties concerned, that they may see the contents at one view, without being obliged to read over the whole bill; however, I would caution every one, to whom a bill is presented for acceptance, not to trust to this, but to read the bill carefully over before he accepts, because it may happen, that the sum in figures may be less than the sum inserted in the bill, which last is the rule by which he

D must

must go. and must pay, even though he should happen to be mistaken.

THE 2^d article I mentioned, and what ought to begin the body of the bill, is the term of payment, which may be reduced to five different manners, and must be written distinctly at full length, as well as all the rest of the following articles; for none who are expert in business make use either of figures or contractions in the body of a bill, to prevent all disputes.

THE 1st term of payment I shall mention is at sight; which kind of bills ought to be paid immediately upon being presented, and so need no further explication: only it may be noticed, that sometimes bills are drawn, "please pay, &c." without mentioning the words "at sight;" though such bills are always looked upon to be at sight, and ought to be honoured accordingly: but trading people seldom use this

from

form, nor indeed do I think they should.

A 2^d term is when bills are made payable at so many days (or sometimes weeks) after sight, which is an uncertain time, and cannot be determined but by the presentation of the bill, because it does not begin to run but from that date, which gives an opportunity to the acceptor to make provision for it, seeing by this means he cannot but know the precise time when it falls due.

At days,
&c. after
sight.

THE 3^d term of payment is when a bill is made payable upon a certain day, such as the 10th, 15th, 20th, &c. day of a certain month; which being always expressed in the bill, can breed no manner of dispute, nor does it need any explication.

Upon a
certain
day.

THE 4th manner in which bills are made payable is at one, two, or more usance, which is a term made use of by

D 2

trading

usance;

trading persons, and is determined according to the use or practice of the place where the bill is to be paid. Sometimes usance begins to run from the day of the bill's presentation or acceptance, but most generally from the date of the bill itself; and the usance is longer or shorter according to the custom of different countries (*a*): but we may observe in general, that the greater distance there is betwixt the place where the bill is drawn, and that where it is payable, the usance is the longer, and *e contra*. But as it would be too tedious to narrate all the different usances, and that most people come soon by practice to know those which fall in their own way, I shall only mention a few of the usances from the most remarkable places of *Europe*, by way of example, and then proceed.

THROUGH all *France* usance is regulated to be thirty days from the date of the bill, by an edict in the month of
March

(*a*) A uso dicitur, secundum usum et placitum platearum in quibus fiunt cambia. *Scaccia*.

March 1673, whatever place the bill be drawn from, which is of great consequence for traders to know, that they may not bring themselves or correspondents into inconveniencies.

AT *London* and through all *Britain* usance of bills drawn from *France* is one month after date, from *Spain* two, and from *Venice*, *Genoa*, and *Leghorn*, three months.

AT *Hamburg*, usance of bills from *France*, *England* and *Venice*, is two months from the date; but that of bills from *Antwerp* and *Nuremberg* is fifteen days after sight, or after the date of the acceptance.

AT *Amsterdam* usance of bills from *France* and *England* is reckoned one month after date; but that of bills from *Venice*, *Madrid*, *Cadiz* and *Seville*, is two months.

IT may perhaps not be improper to observe here a small difference, which
may

may happen, betwixt the *French* usance, which (as was said above) is fixed to a month of thirty days from the date, whereas that of *Britain* and *Holland* is reckoned from the day of the month in which the bill is dated to that day of the month in which it is payable. Thus a bill drawn upon the twenty-fifth of *March* (when the usance is one month) falls due upon the twenty-fifth of *April*; but a bill drawn upon the thirty-first of *January* falls due the twenty-eight, or (if leap year) upon the twenty-ninth of *February*; and again a bill drawn upon the twenty-eighth or twenty-ninth of *February* falls due the twenty-eighth or twenty-ninth of *March*; and so on in all bills, without regard to the month having thirty, thirty one, twenty-eight or twenty-nine days: and I have observed, that our *British* merchants have, for some years past, fallen much out of the custom of drawing their bills at one or two usance, but, instead of that, make them payable at thirty or sixty days after date, which is a very sure way, and can never be mistaken, especially

especially now that we use the new stile here as well as it is used in foreign parts.

THE 5th and last manner I shall mention in which bills are made payable, is at certain fairs or markets, which is not very common, and is only practised where there are established fairs, such as at *Lyons*, *Frankfort*, &c. and wherever this is practised abroad, the particular time of the bill's falling due is also determined by the custom and laws of the place where the bills are payable. And by the bye, I may observe, that there is such a practice amongst the country people in *Britain*, of making their money payable at certain fairs, where they propose to lay it out, such as *Stirbitch* fair in *England*, and *All-hallow-fair*, *Dalkeith* fair, &c. in *Scotland*; and of late they have even introduced the custom of taking and granting bills payable at these fairs.

Bills payable at certain fairs or markets.

THE 3d thing I mentioned as an essential part of a bill is the name of the per-

The name of the person to whom payable.

son

son to whom payable, to which some likewise add the designation, such as merchant in such a place, &c. which I by no means condemn, but do not affirm that it is absolutely necessary, especially seeing no one at signing his name annexes for ordinary his designation to it, but only simply writes down his name, which is sufficient at the discharge of all bills, and consequently all that is absolutely necessary in the body of the bill, though I do not deny that it may sometimes be of use.

HERE it will be proper to observe, that immediately after the name of the person to whom the bill is payable, the ease and conveniency of trading persons has introduced the practice of adding the words *or order*; which I did not mention as an essential part of a bill, because it was not used in the original bills, which were only made payable to such a person the bearer, who (as was said above) carried it along with him, and

Or order.

and received payment upon his discharge; but afterwards, when exchange by bills became a commerce betwixt distant countries, it was found proper to add these words, that so the person to whom the bill is payable might order any other he thought proper to receive it for him; by which means bills may be conveyed through several hands before they are paid; which is a vast conveniency in commerce, as I shall have occasion to shew, when I come to speak of indorsing bills, &c. And indeed it is (not without reason) made a question, both amongst lawyers and merchants, whether or not a bill be transferable by indorsation, if it wants these words, which I shall likewise have occasion to enquire into afterwards: but in the mean time I would advise every one who has occasion to draw bills, and especially trading and exchange bills, never to omit these words *or order*, because it is certain they can do no harm, and generally they are of very great use and conveniency.

Bills passing from hand to hand.

E

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THE 4th essential part of a bill is the sum to be paid, which indeed is so very essential, that there cannot be a bill without it; because, unless that be distinctly expressed, how can either the holder demand, or the acceptor know the demand that is upon him? And here it must be noticed that when a bill is payable for a certain sum of the money of that place where it is to be paid, then no more is needful but the sum payable; such as "one hundred pounds Sterling," if payable in Britain; "one thousand guilders, current or Banco," if payable in Holland; and if payable in France, "one thousand crowns of sixty sols Tournois, &c." But it frequently happens, that bills are drawn for a certain sum of the money current where they are drawn, which hath no course in the place where they are payable, the species being different and of a different standard or fineness; in which case the course of exchange at which the bill is negotiated must also be inserted: e.g. From London, in drawing

The sum
to be paid

ing upon Amsterdam, we would say "one hundred pounds Sterling at thirty four skillings and ten groot Flemish per pound Serling;" and from France upon Amsterdam, they would say "one thousand crowns at fifty two groot per crown, &c." without which the contents of the bill could not be known.

THE 5th essential part of a bill of exchange is, the value, and from whom received, after which the drawer signs his name, which is the 6th essential part, and concludes what we call the body of the bill: but, because this value may be expressed in four different manners, it will be necessary to explain each of them particularly, that every one who deals that way may be able to apply them properly in their several practices.

The value,
and from
whom re-
ceived.

ist THEN, there is "value received" purely and simply, without expressing either in what manner, or from whom, which may comprehend all kind of va-

Value re-
ceived
purely and
simply.

lues whatever, though it is generally to be understood as money: and although this manner of drawing bills is become almost universal, yet it is not what I would advise any one to in common practice, because of the many inconveniences that attend it, which I shall not insist upon at present, because it will come in more properly afterwards.

Value received in merchandice.

THE 2d kind is "value received in merchandice," which is certainly very right and judicious, because it expresses the real value of the bill, and can create no manner of inconveniency to the persons with whom such bills may be negotiated, or who may have them indorsed in their favour; and if any dispute should fall out, it can only be with respect to those who furnished the merchandice, in case it should appear that there was any fraud or deceit which the drawer had not discovered at the time of granting the bill: but this cannot take away its effect; because, if it once be negotiated, and indorsed over

to

to another hand, it must take its course, and the drawer has only recourse by an action against the person who furnished the value in merchandice, in the same manner as if he had bought and paid them with ready money.

It is true indeed, since cunning and deceit have crept into commerce, and that many traders are so far degenerated as to seek opportunities of outwitting one another, that this practice of inserting in bills "value received in merchandice" is much worn out, and subtle dealers have reduced all sorts of values into that of "value received" purely and simply, without mentioning in what manner, which custom has generally prevailed; but in *France* there is an express law (in *March 1673*) obliging the drawer to express how the value was received; and it were much to be wished, that it were so also in all other trading nations.

THE 3d sort of value is, when bills bear "value in your hands," or sometimes

value in your hands.

times "value of myself;" that is, when a banker or merchant draws a bill upon a debtor, and remits it to his correspondent or factor, to procure acceptance and payment, to be afterwards remitted either to himself, or to any other he shall order, the value is of himself, because he is properly creditor of the person upon whom he draws: and if he did not make it in these terms, it might prove very inconvenient; for, if he made it "for value received," then the factor or correspondent to whom he remitted it might pretend that it belonged to himself, seeing the drawer had already received the value, which he would make appear by the bill itself: or at least, if any factor should be so cunning and roguish, it would put the drawer to the charge and trouble of proving that the bill was only remitted in trust, which perhaps at last he might not be able to do, but by his correspondents oath; and really it is a question how far that is to be trusted in one who would pretend to commit such a piece of injustice; and therefore
it

it is the safest and best way to prevent it, by drawing the bill right at first.

I HAVE frequently observed such bills drawn in this manner, *viz.* "value in your hands, and like value in accompt with him," (meaning the person to whom the bill is made payable.)

THE 4th kind of value is "value in accompt," or (as the *French* call it) "value understood;" That is, when a banker or merchant takes a bill from a person of no extensive (or dubious) credit, so that he will not trust him with the money until he has advice of the bill being paid, or at least accepted by a person of undoubted credit, in which case the bill is negotiated in such a manner that the purchaser can run no risque, he only giving his receipt for the bill, bearing a promise or obligation to pay the value when he has advice of the bill being honoured: if it should return with protest, then it is returned to the drawer who must pay the purchaser the charges
of

of protest and postage of letters, and likewise return the obligation he had in its place; and that is the value which was in accompt or understood betwixt them.

SUCH kind of bills are never indorsed, or negotiated beyond the first person who takes them and his correspondent, because they produce no value, for which reason they are very seldom used: but, in place of them, when any person, of no extensive credit in a place, has occasion to negotiate his bills, he generally applies to some particular acquaintance, whose credit is undoubted, and draws the bill to his order, who indorses and negotiates it, keeping the value in his own hands, or else taking some other security, until the bill be paid, or at least accepted by one in whom all concerned can put entire trust.

BESIDES these four there may fall out some other manners of expressing the value of bills according to particular circumstances

cumstances that may occur in business, which every one's own practice will show: but these are what are most necessary to know, and are generally all that are necessary in bills of exchange. So that now, what we call the body of the bill being finished, I proceed to the

7th and last thing mentioned as an essential part of a bill, *viz.* the address, The address. or name of the person on whom it is drawn, which is done below the bill, beginning with the word *to* upon the margin towards the left hand, and then writing distinctly at full length the name, designation and place of residence of the person who is to pay the contents, that so there may be no manner of mistake nor confusion in presenting the bill, either for acceptance or payment.

THUS I have gone particularly thro' all the essential parts of a bill of exchange, which I am hopeful will be sufficient to teach any one to form a bill of any kind that may occur in practice.

F

But

But here it will be necessary to observe, that there is one qualification generally made in bills of exchange, which I have not as yet mentioned, because it is not an essential part of it, but only invented for conveniency, in case of long portage either by sea or land; and that is the practice of giving first, second, and sometimes third, &c. bills of exchange; which is the same thing to the drawer, seeing they are properly no more than authentic copies of one another; and, in case of one being lost or miscarried, then the purchaser, who keeps the rest in his hand, may send another without going back to procure it from the drawer, who, if he were a troublesome or dishonest man, might perhaps take advantage of such a misfortune, and this might occasion great delay and inconveniencies in commerce: but the practice has now prevailed, that the purchaser of a bill generally takes two, &c. bills of the same date and tenor, when he pays the value, and a discharge upon any one of them is sufficient to discharge

charge all the rest, which are of no further use than what is said above.

THE manner of inserting this qualification is this. Immediately after the term of payment, and before the name of the person to whom payable in a first bill, we say, "Pay this first *per* exchange"; and in the second, "Pay this second *per* exchange, (first not paid);" in the third, "Pay this third *per* exchange, (first and second not paid):" and then for the rest of the bill, it is conceived precisely in the same terms, without altering one word: so that, I hope, there will be no more direction necessary with respect to the drawing of bills. But, for the sake of young readers or traders, I shall here give a few a models of the most ordinary bills that occur in business. And, first, I shall begin with the simplest kind, which are not properly bills of exchange, because they are both drawn and made payable in the same place, and are only a security given from one person to another to determine the term of payment, that

so the drawer may know when he may depend upon his money, and are commonly called inland bills.

Inland bills.

N. I. *L. 50 Sterling.* *Edin. 20th June 1763.*

Three months after date, pay to me, or order, upon the *Royal Exchange* here, fifty pounds *Sterling*, for value received by you in merchandice from

ANDREW TRADER.

To Mr *James Traffick* merchant in *Edinburgh*.

Accepts
JAMES TRAFFICK.

N. II. *L. 25. Sterling.* *Edin. 25th June 1763.*

Two months after date, pay to me, or order, at my house here, twenty five pounds *Sterling*, for value delivered to you in a bill with interest to the like value discharged by

PETER HONEST.

To Mr *John Trueman* hofier in *Edinburgh*.

Accepts
JOHN TRUEMAN.

THE above two bills, where only two persons are at first concerned, may either be kept by the drawer till the term of payment, and then he may discharge them, or, if he pleases, he may indorse them to another for payment of a debt, or for any other purpose he finds proper.

L. 40

L. 40 Sterling. *Edin. 24th June 1763. N^o. III.*

Against the term of *Martinmas* next, pay to *Andrew Taylor*, or order, forty pounds *Sterling*, value in your hands, and like value due to him for which he has discharged my accompt of this date.

HENRY TANNER.

To Mr *Peter Andrew* shoemaker in *Edinburgh*.

Accepts
PETER ANDREW.

IN this last bill three persons are at first concerned, and it is the property of *Andrew Taylor*, who may either keep it till the term of payment, or indorse it over as he thinks proper.

THE following models are properly bills of exchange, because they are drawn or dated in one place, and payable in a different place from that.

1ma, per exch. L. 100 Sterling. *Edin. 14th June N^o. IV. 1763.*

Upon sight of this first *per exchange*, pay to Mr *Gilbert Farmer*, or order, one hundred pounds *Sterling*, value received from him in cash, as *per advice* from

PETER BANKER.

To Mr *John Corner* merchant in *London*.

2da,

2da, per exch. L. 100 Sterling.

Edin. 14th June
1763.

U Pon sight of this second per exchange, (first not paid,) pay to Mr Gilbert Farmer, &c.

N. B. The above bill cannot be accepted, but must be paid upon presenting.

Nº. V. 1ma, f. 1000. cur. Edinburgh, 15th June 1763.

TWenty days after sight of this first per exchange, pay to Mr Walter Stalker, or order, one thousand guilders, current money of Holland, for value received of him in merchandice; which place to accompt, as per advice from

DAVID TRADER.

To Mr Abraham Van- Rotterdam, 26th June 1763.
Hoven merchant in Accepts
Rotterdam. ABRAHAM VAN-HOVEN.

2da, per exch. f. 1000 cur. Edin. 15th June 1763.

TWenty days after sight of this second per exchange, (first not paid,) pay to Mr Walter Stalker, or order, &c.

3tia, per exch. f. 1000. cur. Edin. 15th June 1763.

TWenty days after sight of this third per exchange, (first and second not paid), pay to Mr Walter Stalker, or order, &c.

Nº. VI. 1ma, per exch. L. 100 Sterling. Lon. 24th June 1763.

A T usance pay this first per exchange to Mr James Travel-
ler, or order, one hundred pounds Sterling, at thirty
four

four skillings and ten groot Flemish per pound Sterling, for value of him, as per advice from

ROBERT BROKER.

To Mr Andrew Van-Dyk mer-
chant in Amsterdam.

Accepts

ANDREW VAN-DYK.

As this last bill is supposed to be drawn in favour of a traveller who is going to Amsterdam himself, his best way is to take first, second and third bills, one of which he ought to send by post to some person residing in Amsterdam, with orders to get it accepted, which he may either indorse or not, as he thinks proper; and, when he comes to Amsterdam, he is to call for the person who had orders to get it accepted, and, upon shewing him the other bill or bills, he cannot refuse to give it him up.

1ma, per exch. W. }
1000 Tournois. }

Edinburgh, 25th Nº. VII.
June 1763.

T Hirty days after date of this first per exchange, pay to Mr Lewis Ker, or order, one thousand crowns of sixty fols Tournois per crown, for value received of him in a discharged accompt.

PETER TURNER.

Accepts

To Mr Jaques Delamotte
banker in Paris.

JAQUES DELAMOTTE.

Nº. VIII. 1ma,

N^o. VIII.1ma, per. exch. W. }
1000 Tournois. }Bourdeaux, 26th
June 1763.

AT two usance, pay this first *per* exchange to Mr *Andrew Broker*, or order, upon the *Royal Exchange of London*, one thousand crowns of sixty sols *Tournois*; at thirty two pence *Sterling per* crown, for value in your hands, and like value received of him, as *per* advice from

GEORGE FACTOR.

To Mr *John Dealer*
merchant in *Edin*.Accepts, payable at the house of Mr
John Banker merchant in *Lond*.

JOHN DEALER.

BILLS of this kind ought to be accepted in the above manner, in order to shew the bearer where he is to call for payment; and sometimes I have observed such bills accepted simply, and the acceptor writes below, "Call at the house of *John Banker of London*." Either of these methods answer the end, and are both practised by merchants; and, in case a protest for not payment be made at the house mentioned, it will be effectual for recourse against the acceptor, &c.

N^o. IX.L. 150 *Sterling*.

Edinburgh, 28th June 1763.

TWENTY days after date, pay this first *per* exchange to the order of Mr *Joseph Van-Dyk*, one hundred and fifty pounds *Sterling*, value received of *William Factor* for accompt of

of Mr *Jan De Bruyn of Gottenburg*, which pass to accompt, as *per* advice from

JOHN DEALER.

To Mr *Peter Trader* mer-
chant in *London*.Accepts
PETER TRADER.

HERE we find no less than five different persons concerned. 1st, We have *John Dealer* the drawer, who receives the value at the place where the bill is dated. 2^{dly}, We have *William Factor*, who pays the value at the place where the bill is dated. 3^{dly}, We have *Peter Trader* who must accept and pay the value at the place where the bill is payable. 4^{thly}, *Joseph Van-Dyk*, who is to receive the value at the place where the bill is payable. And, 5^{thly}, *Jan De Bruyn of Gottenburg*, for whose accompt the money is paid and received.

HERE it is supposed that *William Factor* has received, at the place of his residence, money for accompt of *Jan De Bruyn*, with orders from him to remit the money to *Joseph Van-Dyk*: and therefore it is his duty to advise Mr *Van-Dyk*,

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when

when he remits the bill, that it is for Mr *De Bruyn's* accompt; and by the same post he ought to advise Mr *De Bruyn*, that he has remitted such a sum to his correspondent Mr *Van-Dyk* at *London*; that so all parties may be duly advised, and act their several parts accordingly.

GENERALLY speaking, it is a matter of indifference to the drawer to whom he makes the bill payable, that being in the option of the person who pays the value, either to cause make it payable to himself, or to any other he pleases, for value received of him; and therefore I shall shew in few words when it may be proper and safe for the purchaser of a bill to take it payable to himself, and when not.

IF a man who deals for his own proper account hath occasion to remit money to his correspondent or factor, either to be disposed of agreeably to his orders, or to pay what he owed his correspondent for goods sent or otherways, then he may safely take the bill payable

to

to his own order, and afterwards indorse and remit it to his correspondent, by which indorsation he runs no more risque than otherways he would have done; because, if his correspondent had orders to dispose of the money in any particular manner; that could not be done until it was received; or at least, if he advanced it upon these orders, that would give him recourse upon the person for whose accompt he advanced it, in case the fund remitted did not answer: because no man is to run a risque for another's account, unless there be an express obligation upon him to that purpose; and if the bill was designed to pay a debt formerly owing, but happens not to be honoured, he is still liable for his debt, and to warrant all funds he remits for discharging it.

ON the contrary, if a factor, acting for his employer, hath money in his hands to be remitted to that employer in bills of exchange, the factor ought to cause make the bills payable directly

G 2

to

to that employer to whom the money belongeth, for value received of him (the factor), by which means there can be no recourse upon him, seeing he is not an indorser, and the bill itself shews that he has actually paid the value; so that, if the bill should not meet with due honour, the only recourse is upon the drawer who received the value, provided the factor can prove, that, at the time when he purchased the bill, and paid the value, the drawer had the reputation of a man of undoubted credit, which certainly he ought to take care of; because, if the contrary can be made appear, then (and very justly) he will be found liable, for not dealing fairly in employing his correspondent's money as cautiously as he would have done his own, which every factor ought to do as a man of candour and honesty.

Recambio. RECAMBIO, OR RE-EXCHANGE, was first fixed at *Amsterdam*, upon pretext of recovering expences, damages and interest,

rest, upon a bill's returning with protest: but, according to the laws of exchange, this re-exchange cannot be demanded but when the nature of it is such, that the equivalent is re-drawn by the bearer of the bill, at the place where it was protested, upon the remitter or indorser, at the place where it was first drawn; and the difference in the course of the exchange back makes the re-exchange, which is always to the disadvantage of the drawer. And because there is scarce any article of trade which hath been more abused, and less understood, even by those who have had pretty much experience in other particulars, I would advise every one who proposes to have any considerable dealings in bills, to take particular care to prevent their being imposed upon by their correspondents in this article of re-exchange: for which end it will be absolutely necessary they take care every post day, at the time and place appointed for such transactions, to have certain information of the courses of exchange, both to and from

from all the different places where they have correspondents. Their own transactions will readily inform them, how the course goes from the place where they reside to other places; but it will not be so easy perhaps to know, how it comes off from other places upon that of their residence, unless they take care to order their several correspondents to remember, every time they have occasion to write them, to mark the several courses of exchange; and, if they have no occasion to hear it themselves directly from these places every post day, they ought to enquire at those of their acquaintance who have. And here I do not think it amiss to observe, that it is become customary, amongst all considerable and experienced merchants, to mark the several courses of exchange, in the place of their residence, at the bottom of their letters to all their different correspondents, but especially bankers, who are looked upon as negligent or indolent if they omit it.

Now,

Now, that this article of re-exchange may be the more clearly understood, I shall, for the benefit and instruction of those of the younger sort, who perhaps are still somewhat in the dark about it, endeavour to illustrate it by one plain and easy example.

SUPPOSE then I am engaged, for the honour of my correspondent in *Holland*, to pay *L. 100 Sterling* upon a particular day, and he, in order to furnish me with a fund for that purpose, hath remitted me a bill of exchange, which I am to receive payment of that same day, or perhaps a day or two sooner, (which is generally so ordered in such cases); but the acceptor failing to pay it to me, and I having no other fund to pay the *L. 100 Sterling* for accompt of my friend, am obliged to return the bill remitted to me by him with protest, and to re-draw upon him for the value of the *L. 100*, which I receive here in order to pay what I had engaged for on his accompt: and this is the

Illustrated by an example.

the only way to save my own credit, as well as that of my correspondent.

Now, I suppose my friend in *Holland* purchased that bill at the rate of one guilder in *Holland*, for two shillings *Sterling* to be paid here, so that the *L. 100 Sterling* cost him 1000 guilders: but, when I draw upon him for the value of *L. 100*, I receive only twenty two pence for every guilder to be paid in *Holland*; so that I must draw upon him for 1090 guilders 18 stivers, which is 90 guilders 18 stivers, that is, above *L. 9 per cent.* more than he paid to the person who furnished him the bill on this place, and is the re-exchange, which he may justly charge him with upon the bill's being returned duly protested.

AGAIN, let us suppose, on the contrary, that a certain friend of mine in *Holland* is obliged to pay in that place where he resides 1000 guilders on my account upon a particular day, for which end I have purchased a bill here upon that place, which I remit him for a fund; but the

the acceptor of that bill failing to pay it, he returns it to me with protest, and re-draws upon me, in order to discharge what he was bound to pay for my account. Now, let us imagine, that I purchased the bill which was sent him for his fund at the rate of twenty two pence *per guilder*, so that it cost me *L. 91. 13. 4. Sterling*, but he, according to the course of exchange in *Holland*, re-draws upon me at the rate of 24 pence *per guilder*; so that he must draw upon me for *L. 100 Sterling*, which is *L. 8. 6. 8.* more than I paid to the person who furnished me the bill upon *Holland*, and is the re-exchange which I can justly charge him with, upon his bill returning duly protested: nor needs this seem unreasonable, if we consider, that, in either of these cases, both my friend's credit and mine were at stake, had not this method been fallen upon to prevent it.

HERE it will be proper to observe, that a draught and a remittance are opposite expressions, and yet may be properly ap-

H

plied

Draught and remittance, how applied in bills.

plied to one and the same bill of exchange. In order to clear up this seeming contradiction, we must observe, that in all bills of exchange, at least three, and frequently four persons are concerned, viz. 1st, The drawer; 2^{dly}, The purchaser; 3^{dly}, The bearer; and, 4^{thly}, The acceptor. The drawer receives the money at the place where the bill is dated or drawn; the acceptor pays the money at the place where the bill is payable: so that, with respect to these two, it is called a draught, or an order to pay. With respect to the purchaser and the bearer, it is called a remittance, or an order to receive the money. Thus, in the above bill, No. IX. with respect to *John Dealer* and *Peter Trader*, that bill is called *John Dealer's draught upon Peter Trader*; but, with respect to *William Factor* and *Joseph Van-Dyk*, it is called *William Factor's remittance to Joseph Van-Dyk*.

A draught continued.

A DRAUGHT is said to be continued, when a person draws upon his correspondent in one place, and orders him

to

to draw upon a correspondent in another place for his reimbursement.

A REMITTANCE is continued, when one remits a bill to his correspondent in one place, with orders to receive payment, and to remit the value to another person some where else.

A remittance continued.

SOME perhaps, who are unexperienced in business, may be ready at first to look upon this as an useles piece of trouble, as well as an additional charge, which might be saved by the first drawer, and remitter drawing upon, or remitting to those third places directly himself, rather than giving the respective orders to a third person: but the usefulness, as well as necessity, of this way of managing will soon appear, if we consider the reasons for it, which may be very different, according to the different nature and circumstances of business. I shall now only mention two, which seem to be the most obvious, and I am hopeful will be sufficient for our present purpose.

H 2

First,

Reasons
for this
conduct.

First, THERE may be more advantage by the course of exchange betwixt these two places where the different correspondents live, than betwixt the place where he that gives the orders and the second correspondent resides, on whom the second draught, or to whom the second remittance is ordered to be made: and it ought to be a maxim in all trade, that where most advantage is to be found in a fair way, that method ought to be followed.

Secondly, THE reason may proceed from the want of trade betwixt the place of the first person's residence and that of the third, wherefore he is obliged to make use of the medium of a correspondent in another place, betwixt which and that third person's residence there is trade, and consequently a course of exchange.

I HAVE already shewn, that there are four different kinds of bills with respect to the terms of payment, all which I have particularly explained. I have like-
ways

ways shewn, that bills may be of four different kinds with respect to the value received. The first kind bears value received purely and simply, which I have observed includes all kind of values, whether in money or merchandice, &c.; the second bears value received in merchandice, sometimes mentioning the particular kind; the third bears value in your hands; and the fourth, value in accompt, (or understood.) The three first kinds of bills are uniform with respect to the value, that is, that, in which of these three terms soever a bill be conceived, the value is always understood to be received in all courts of judicature; but then they have their own particular influences, and different operations, as shall be shewn in course.

BILLS of exchange which bear purely and simply value received, are the most common, (nay, I may say) are generally used in this country; though it is certain, this is a dangerous practice, and may occasion many inconveniencies to the public;

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so that it were much to be wished, that we had particular statutes, ordaining that all bills should mention, not only that the value is received, but also in what particular manner and kind, as it is expressly provided in *France*, by the statute in *March* 1673, "where it is ordered, that bills of exchange shall briefly contain the name of the person to whom payable, the time of payment, the name of the person who gave the value, and whether it was received in money, merchandise, or other effects." All which may easily be done, and still the bill may be conceived in such brief and concise terms, as can alter nothing of its original constitution.

IN order to shew the necessity of such a law, let us only enquire into the inconveniencies which attend our present practice, of mentioning only value received simply, which may be of a vast prejudice to commerce, especially in case any of the persons concerned happening to give way, when the value of a
bill

bill is unknown: for it frequently happens, that one merchant or dealer in exchange furnishes another a bill upon *London*, for example of *L. 100*, bearing simply value received, for which he hath only got a receipt bearing also value received, without expressly mentioning that value to have been in a bill of exchange. If this merchant, in whose favour the bill is drawn, happens to fail before it becomes due, he may indorse it to a particular friend to receive payment when it falls due, only mentioning simply value received, and by this means may oblige the person who furnished him the bill to enter into a composition in common with the rest of his creditors, by which he may be a considerable loser, without being able to prevent it; because the bill bearing to pay to that person or his order, neither he upon whom it is drawn, nor the drawer himself, if it should return protested, could avoid payment of the contents: for the indorsation, bearing value received, gives a right and title to the bill, and lodges the
property

property of it in the person of the indorsee, by means of the value, which he hath given to the indorser; so that the drawer, or he who furnished the bill, perhaps a few days before the failure of the person to whom he furnished it, is obliged to cause his correspondent, who is the acceptor, pay the contents, or to pay it himself, in case it should be protested, and to enter into a composition whereby he may perhaps lose $\frac{1}{4}$ or $\frac{1}{5}$ of the sum, without being able to prevent it, which every one must acknowledge to be a very great hardship, seeing he received no other value for it but a simple receipt.

AGAIN, it may happen that a merchant finding himself hard pressed by his creditors, and being able to stand it out no longer, in order to get assistance, he declares his circumstances to some of his friends, who happening also to be his creditors, and finding the bad situation in which his affairs are, far from assisting him, they endeavour to keep themselves

themselves clear; and for that end, if they find bills of exchange amongst his effects, they oblige him to indorse them in their favour for what he owes them, whereas these bills ought to be returned to those from whom he had them, in case they have got no other value but a simple receipt: and it is well known, that such tricks as these are played every day in case of bankruptcies, some of which I have had occasion to know myself; but I shall here give an example of one related by *Monsieur Savary*, in his *Parfait Negociant*, which, he says, happened about three or four years before his writing that book, and will show the advantage of honesty and fair dealing, and how far they may tend to the re-establishment of a man's credit, when he hath met with misfortunes. The story is this.—

A YOUNG gentleman of his acquaintance, who dealt considerably in bills of exchange, finding his affairs in confusion, by the losses he had sustained in his trade, came to ask his advice on that occasion.

caſion. In talking to him about his affairs he ſhewed him a letter-caſe, which was in his pocket when the reſt of his effects were inventoried, and in which were bills of exchange to the value of ſixty thouſand livres, which ſome rogue of his acquaintance had adviſed him to conceal, in order to ſupport him in his neceſſity: among which bills there were two furniſhed him by two certain perſons, one for 15, and the other for 12 thouſand livres, payable to him, or his order, at *Lyons*, for value received purely and ſimply, without expreſſing in what manner; and at the ſame time, in a liſt of his creditors which he produced, he had placed two particular perſons, the one for 15, the other for 12 thouſand livres, for which ſums he had given them his ſimple obligation for value received.

MR *Savary*, immediately ſuſpecting that the value of the two bills was nothing elſe but theſe two ſimple obligations, interrogated him upon that head: whereupon he frankly acknowledged, that

that he had given no value for the bills, but theſe receipts; and that the value expreſſed in the receipts was nothing elſe but the two bills of exchange.

UPON the whole, his friend gave him the two following advices. 1^{ſt}, That he ought to deal fairly and honeſtly with his creditors, and not to conceal or withdraw out of his effects the bills and obligations which were in his letter-caſe: adding, that he had been very ill adviſed; and that, though he was unfortunate, he ought ſtill to retain his integrity; and therefore that it was his duty, at the firſt meeting of his creditors, to repreſent the caſe to them fairly, and to let them know that theſe two bills and receipts were reciprocally the value of each other; by which means his creditors would be convinced of his honeſt intentions.

THE 2^d advice was, That ſeeing theſe two bills were in his cuſtody undispoſed of, at the time of his giving way, he

ought to restore them to the persons from whom he had them, and retire his own obligations, which were their value; because it was not reasonable that the contents of these bills should go for the use of his creditors, nor that the persons who had furnished them, and were the bearers of the two receipts, should be brought to any loss. The unfortunate gentleman followed these two advices, restored the two bills, retired his own obligations, and put the rest of the bills, which were in the letter-case, amongst his other effects for the behoof of his creditors; which management convinced his creditors of his integrity, and brought them very soon to make an agreement with him.

Now, supposing that this unfortunate gentleman had followed the bad advice he got from his first friend, then it is certain, the persons from whom he had these two bills must of necessity have joined with the rest of his creditors in the composition, by which they lost one half of their sums, and that it was just so much money

money taken out of their pockets for the benefit of his other creditors; and at the same time, if he had concealed the rest of the bills which were in the letter-case, his creditors would have lost three fourths of their sums, which would have been an horrid injustice, and if the affair had broken out afterwards (which probably it might) would have entirely ruined his reputation, and prevented his getting any credit for the future.

By this example we may see the danger of not mentioning the value in a bill of exchange: for had these two bankers, who furnished the bills to the merchant above-mentioned, inserted in their bills *value received*, in an obligation or receipt for the like sum; and if the receipts which were given for the bills had born value received in a bill of exchange, furnished by him to me of this date upon such a man at *Lyons*, &c. then could they legally and justly have recovered their bills, although the other creditors had pretended a right to them,

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seeing they were not disposed of, or made over any manner of way, by the bankrupt before his bankruptcy was discovered. But, on the other hand, it is as certain, that, in the manner these bills and receipts were conceived, if they had been disposed of to a third person, they could never have recovered them, seeing it could be made appear, that they were satisfied with a simple receipt from the person to whose order they drew them, and therefore they must have taken their fate with the rest of his creditors.

THERE is another inconveniency of very great consequence, frequently occasioned in cases of bankruptcy, when bills bear simply *value received*, without expressing the nature of the value, of which I shall give an instance that happened to a certain merchant, and obliged him to give way in the following manner.

A CERTAIN merchant of *Amsterdam*, a man of considerable credit and authority

ty in that city, whom, for distinction sake, in relating the story, we shall call *Jan*, was creditor of a *French* merchant living in the same city, whom we shall call *Jacques*. *Jan* perceiving his debtor's affairs declining, and somewhat suspicious, in order to secure himself, obliges *Jacques*, either by promises, threatnings or some other means, to draw upon his correspondent at *Paris*, whom we shall call *Alexander*, to the extent of 60,000 livres, in bills to his order, bearing simply *value received*; which bills *Jan* indorses to his correspondent, also residing at *Paris*. The bills were no sooner accepted by *Alexander*, than *Jaques* of *Amsterdam* steps out of the way, and becomes bankrupt; which obliged *Alexander* of *Paris*, upon whom the bills were drawn, to give way also, because he had accepted them without having provision in his hands: which was a piece of very great villany in *Jaques* of *Amsterdam*, to draw upon his friend who owed him nothing, at a time when he knew himself a bankrupt.

A BROTHER of *Jaques* who was his book-keeper, being displeas'd with his brother's villany, writes to *Alexander*, advising him, that notwithstanding the bills bore *value received*, yet his brother had received no value, but only that *Jan* had given a note bearing a receipt of the bills, and an obligation to accompt for the value so soon as he was advis'd of their being paid by *Alexander*; which letter gave occasion for a very great process, betwixt *Alexander* who had accepted the bills, and those persons to whom *Jan* had indorsed them.

FROM the relation of this affair may be propos'd three questions, which deserve our consideration. The *first* is, Whether or not *Jan*, who in a manner compelled his debtor *Jaques* to draw the bills for 60,000 livres in his favour, five or six days before he was publicly known to be a bankrupt, would have been oblig'd to re-pay the value for the behoof of the whole creditors, supposing he had received

received payment of them from *Alexander* the acceptor?

2dly, WHETHER or not *Alexander* the acceptor might have had an action against *Jan* of *Amsterdam*, to procure restitution of the contents, supposing he had paid them to the bearers, founding his action upon deceit and fraud; because he had made the drawer insert in the bills *value received*, when he had given no other value than a simple receipt, promising to be accountable for it, so soon as he knew the bills were paid?

THE *3d* question is, Whether or not *Alexander* might have got himself freed from paying the bills, after he had accepted them?

WE shall now examine a little into these three questions for the instruction of young gentlemen who intend to follow business; that they may know the better how to manage in cases of this kind, if any such should happen to them

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in their practice, either for their own accompt, or that of their employers.

THE 1st question is not easy to solve, by reason of its particular circumstances; for there would have been no difficulty in it, if *Alexander* the acceptor had been debtor to, or had in his hands effects to the value, belonging to *Jaques*, who drew the bills in favour of *Jan*, who was really his creditor. In that case it is not to be doubted, but he would have been obliged to return the value for the behoof of all the creditors, and taken his own hazard in common with them, according to his proportional claim; because it is not lawful for a trading man, to dispose of his moveable effects in favour of one creditor, to the prejudice of the rest, at a time when he knows his being declared bankrupt is unavoidable: but to draw a bill of exchange upon a person who owes him, in favour of one of his creditors, to the prejudice of the rest, is the same thing as if he had given him merchandice or other moveable

moveable effects in payment, or as if he had given him assignations on others for effects disposed of, upon the approaching of his bankruptcy.

I CONFESS, the particular time when a man may be said to be bankrupt, and therefore not have it in his power to dispose of his effects, hath not (for what I know) been particularly determined every where; some being of opinion that it ought to be 15, others 8, and others again only 4 or 5 days, before it break out publicly: so that the judges generally determine in matters of this kind according to the particular circumstances of the affair. But in *France* there is a regulation made at *Lyons* 2d June 1667, homologated by an act of council the 7th of July following, and ratified by the parliament the 18th of May 1668, which ordains, " that all
 " grants and transports whatsoever upon
 " the effects of bankrupts shall be held
 " as void and null, unless they are
 " made at least 10 days before their
 " bank-

“bankruptcies break out:” which act must certainly be of great use, in preventing disputes and tedious processes upon such occasions.

I HAVE seen several acts, both *English* and *Scots*, anent bankruptcies, declaring when a man may be said to be bankrupt, and consequently cannot lawfully alienate his effects; such as absenting himself from his house, suffering himself willingly to be arrested for any debt or other thing, &c. hath or will suffer himself to be outlawed, or yield himself to prison, &c. But none of these seems to hit our case exactly. The one that comes nearest to it is one of *K. James VI.* which says, “Reductions of alienations in defraud of creditors are privileged upon 21 days warning, without dyet, table or continuation; and, before the party receiver of the alienation be admitted to produce and answer, he should consign in the clerk’s hands a sum to be modified by the Lords, and given to the pursuer, in case the alienation

tion be found to be fraudulent:” and I am told, that after one is denounced he cannot lawfully alienate any of his effects.

BUT, be that as it will, our present affair is not of this nature: for *Alexander* who accepted is not debtor to *Jaques* who drew the bills, but only accepted them for honour of the drawer, expecting provision from him to retire them when they became due; so that having drawn bills, in favour of *Jan* his creditor, upon *Alexander* who owed him nothing, he did no injustice to his other creditors, who could not alledge that he had disposed of his effects to one creditor in prejudice of the rest: but the only injustice was done to *Alexander*, upon whom the bills were drawn, who pays them out of his own money, expecting to be reimbursed afterwards by the drawer. Thus I think it would appear that *Jan*, in whose favour the bills were drawn, would not have been obliged to replace the value amongst the bankrupt’s effects, to be divided amongst the creditors,

creditors, seeing, if he had received the money, it could not properly be called any part of the effects belonging to the common debtor, who was become bankrupt.

THE 2d question is to know, if *Alexander* the acceptor, provided he had paid the contents of the bills, could have had an action against *Jan*, in whose favour they were drawn, considering that he had given no other value than a simple obligation, to be accountable for them when they were paid?

FOR answer to this question, we must consider, that though the bills were accepted, yet they were not paid at the time when the drawer was known to be bankrupt; so that, if the acceptor had sufficient proof that the value of the bills drawn upon him was nothing else but the obligation above mentioned, he might lawfully and justly have got himself discharged from his acceptance, because the value was not to take place till after

after payment of the bills, according to the express condition mentioned in the obligation; and the *value received* expressed simply in the bills not being real and effectual, but only a mere fiction and deceit, ought only to be considered as relating to the condition of the obligation; by which I mean, that the value could take no manner of place until after the bills were retired by the acceptor.

THIS case seems to be much of the same nature with that of gifts, some of which take place from the date of the donation, whereas others again (which we commonly call legacies) take no place until the date of the donator's decease: so here, provided these bills were found still to belong to *Jan*, in whose favour they were drawn, and that they were not disposed of by indorsements in favour of a third person, then the value could take no place, the time of payment, when only it was to have taken place, not being come; but if they had been indorsed to a third person who,

who, knowing nothing of the deceit, had actually paid the value, either upon the faith of their being accepted before they were negotiated, or even suppose they had not been accepted till after they were negotiated, yet *Alexander*, by virtue of his acceptance, would have constituted himself a real debtor to the bearer, provided the indorsation bore *value received*.

BUT if it appeared by the indorsation, that the person to whom the bills properly belonged had received no value, that is, that the indorsations did not bear *value received* from the persons in whose favour they were indorsed, then the bills are looked upon as still belonging to *Jan* the indorser: because, as was said above, when the indorsation bears *value received*, it makes the person in whose favour it is passed proprietor of the bill, he to whom it is paid having lost all title to it, by virtue of the value which he has received; so, on the other hand, when the indorsation does
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not bear *value received*, the indorser having never divested himself of his title to the bills, they still properly belong to him: which was the case here. For *Jan's* indorsation bore no more than these words, *And for me pay the contents to, &c.* without adding the words *Value received*. Indorsations of this nature have no more virtue than that of a procuration, or power to receive payment and give a discharge, the person to whom the order is given being still accountable to his constituent; whereas indorsations, bearing *value received*, have the same effect as transfers, where the debtor of the person granting, after accepting, hath, by virtue of his acceptance, brought himself under an obligation to the person in whose favour the transfer is granted: so that these indorsations being found not to bear *value received*, *Alexander* might undoubtedly get himself acquitted from his acceptance, provided still, as was said above, he could prove, that the person in whose favour the bills were drawn had given no value,

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and was only to be accountable for it after they were paid.

WHAT has been said above may serve in some measure for answer to the 3d question, which is, to know if the acceptor could have got himself discharged from his acceptance, and consequently freed from paying the bills? It would appear that he could not, if the indorsation had born *value received*, and he would have been obliged to pay them, seeing he could not alledge in his action the reasons above mentioned to get himself discharged from his acceptance: but as the indorsation did not bear *value received*, but only these words, *For me pay the contents, &c.* the bills did not properly belong to the indorsee, but were only simple procurations to receive the contents, and to be afterwards accountable to the indorser, to whom they still belonged, seeing he had not divested himself of the property, which he certainly would have done, had he indorsed them for *value received*; consequently Alexander the

the acceptor might justly sue to have himself discharged from his acceptance; and his action would have been very well founded, still supposing, that he had sufficient proof, that the value of the bills was nothing else but the obligation given by *Jan.* to the drawer, to be accountable to him when the bills were paid. But, on the other hand, if the acceptor had not sufficient proof of the simple obligation to be accountable when the bills were retired, and if his only evidence was, that the bills bore *value received* only purely and simply, I am of opinion that he could have no action against *Jan.* in whose favour the bills were drawn, either to get his acceptance declared null, or to cause him repeat the contents if he had paid them to the bearers, altho' the indorsations did not bear *value received*. The reason is plainly this, That, with respect to the acceptor, there was no deceit or fraud upon *Jan's* part, but only upon the part of *Jacques* the drawer, whose credit only *Alexander* the acceptor depended upon, L 2 trusting

trusting to his promise in the letter of advice, that he would make him timeous provision, or that he might revalue upon him for his reimbursement. For it is always to be presumed that he was satisfied with his friend's draught, especially seeing he accepted voluntarily, when at the same time he had it in his power to have refused. It was sufficient that the bills bore *value received*, and that he accepted them merely to serve his friend, and to facilitate his affairs: and, if it were not so, there would be no manner of security in the commerce of exchange, which would put an intire stop to it, and consequently to all other commerce, of which it is one of the chief springs.

BESIDES these mentioned, there is an infinite number of other abuses and inconveniencies, occasioned by bills bearing simply *value received*, without expressing what the value was; especially in the case of bankruptcies, when they happen to persons of little honour or honesty, who are willing to enrich themselves

themselves at the expence of their correspondents, and who, abusing their credit, draw at random where they have no effects, nor money due them, and receive the value of their bills from the persons to whom they furnished them, after they are accepted or paid; seeing rogues know one another, and those who have a mind to be guilty of such villanies will always find others, like themselves, ready to connive with them, and be their accomplices.

THE *Jewish* merchants have fallen upon the same trick, to keep their friends and relations out of *scrapes* of this kind: for they take care upon such occasions never to insert in their bills *value received in a like sum due to him*, or any other particular value expressed, but only simply *value received*; knowing very well, that, if it were inserted, that the value was only a discharge of a debt due, and that the bill was furnished upon a real debtor of the drawer, they would then be obliged to repeat the value, in order to
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be distributed in common amongst all the creditors, as I have shown above, and which is most reasonable, to prevent all fraud and villany in the like cases.

BESIDES these, and many other mischiefs too tedious to enumerate, what miserable oppressions and usuries have been occasioned by this bad practice (which is now become almost general) of drawing bills simply for *value received*, is very well known to all who have had any tolerable experience in trade; and therefore I believe it will appear evident, that the edict in *France*, of *March 1673*, (formerly mentioned), has very wisely provided, that all bills ought to mention how the value was received, whether in money, merchandice, or any other effects, or in what manner soever it was received. And indeed it seems to be the most just and fairest way of dealing, in all kind of commerce, to express things as they really are, according to the different nature of the transactions. There can no inconveniency happen to trading persons,

persons, when they draw bills, to declare ingenuously what value they have received; that can neither cheat or impose upon any concerned; on the contrary, it serves to establish fidelity and honesty, and prevents the abuses and inconveniencies already mentioned, by discovering the plain matter of fact, when it is expressed. *e. g. Value received in merchandice formerly sold and delivered to me, or instantly delivered, or in full of all owing by me preceding this date; or perhaps, value received in the like sum assigned to me upon such a person, or in a bill upon such a one indorsed to my order, or value of the balance of an accompt due to him, or even value received in an obligation of this date for the like sum; or, in short, value in any thing that may happen, according to all the variety of transactions betwixt man and man, whether traders or others.*

AND I am persuaded, that those who have nothing else in their view but to deal fairly and honestly, without imposing upon those they have to do with, will

will have no objection against this method of expressing distinctly the value in bills. For is it not sufficient that the value expressed does not tend to mar or hinder the validity of the bill? but all the different values above mentioned, and many more that may occur, are good and sufficient, and can by no means hinder a bill from taking the due effect.

I do acknowledge, that if there are any who propose to deal in bills of exchange with cunning and artifice, who are desirous to conceal their own injustice, who design to oblige their debtors *per* force to keep them free at the expence of others, when they suspect any danger, or who incline to practise usury and oppression, such persons, I say, will no doubt have abundance of objections against this method; but amongst honest and fair dealers, who have no other view in all their actions but justice and equity, and who would not be guilty of any of the above-mentioned irregularities, altho' it should tend to their own
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hurt, I am persuaded there is not one but would desire with all his heart, that this was the practice, and even that we had such a law enacted for the benefit of commerce.

I do not doubt but there are some who, for their own interest, endeavour all they can to contradict good laws, who not being willing to submit to them, will fall upon abundance of artifices to dispense with them, and will be ready to say, that it is a great hardship upon traders, that people should know they purchased their bills only by granting obligations to pay the value afterwards to the drawers; that this may do prejudice to their credit, by discovering that they have not paid them in ready money, &c. Why truly this reason seems very ridiculous: for I would gladly know whether these persons do not lose their credit with those that take their obligations for the value of the bills they furnish them. If that was the case, and they were so jealous of their
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credit as they pretend, then they would certainly take care not to engage with them in such bargains.

O! BUT, say they, this is a secret, seeing no body knows it, but the person with whom the transaction was made. But these bills may be negociated, and so pass through several hands by indorsations; and consequently all those through whose hands they pass must necessarily know, that no other value was given for them, but a simple obligation, which would lessen their credit. But how can their credit suffer by that? Does not every body know that all traders both take and give money? and may not that harm their credit as much as taking bills of exchange for their obligations? They do not in this case take ready money, but only a bill which has perhaps longer time to run than their notes which were given for the value; and is it not the very nature of exchange to take ready money for the equivalent, only to be paid some time after? So that,
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by this way of reasoning, the drawer hath as much reason to be afraid of his credit when he takes ready money, as the purchaser when he gives a note for the value. And yet none ever thought it an affront to dispose of his bills for ready money; besides, instead of being an affront, I think is greatly for a man's honour, and tends to the confirming of his credit, when people see that he is able to purchase for a note or obligation, what others must pay ready money for, or go without.

BUT says another, I do not incline that it should be known that I have only transferred a debt due to me by some other person, for a bill that I have purchased. Pray does not every one know that, if you be a trader, you must have debts owing to you; and where is the harm of transferring them, more than receiving payment of them yourself? Does not the person who furnisheth the bill transfer to you a debt due to him?

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and do not you transfer that again by your indorfation to another? So that, if this way of reasoning should hold, then no bills could be negotiated, and by that means all the benefit that accrues to commerce by exchange should soon be brought to a stand.

BUT, after all that has been said, there may be some still who will argue thus: I have but a small stock to carry on my trade; and I should not be able to drive it to such a height, or deal so extensively as I do, if it was known that I gave no immediate value for several of my bills, but only obligations to pay some time after. Why truly, when this happens to be the case, (as I am afraid it is but too often), all that can be said to such bold dealers is, that they are very rash and inconsiderate, thus unaccountably to risk their friend's effects, and their own honour, to satisfy their mad ambition. Is it not this unhappy ambition which is the occasion of so many turning bankrupt themselves, and drawing in several

ral others into their misfortunes? Let us but look back for many years past, and we shall find that the great reason of many traders failing, and coming short in their accompts, hath proceeded from the returning of their bills with protest, and that many more have been ruined by extravagant interest, and charges upon returned bills and other diligences, than by any visible losses sustained in the course of their trade.

THUS having enlarged pretty fully upon the different value of bills, and shown the reasonableness of expressing it distinctly, to avoid all inconveniencies that may attend the contrary practice, I shall proceed, in the next place, to consider,

WHETHER or not the drawer, after having delivered the bill, be at liberty to countermand the payment of it upon pretence of not having received the value, or the like. Upon this question some traders

traders have made two different distinctions.

If the drawer be at liberty to countermand payment after delivering the bill,

THE 1st distinction is betwixt a bill drawn for value in ready money, and one only drawn for value of such a person, without mentioning *in money*; and (say they) if it bears value in money, then the drawer cannot countermand, but is obliged to cause pay it, or else be liable for all cost, damages and interest: but, if the value is declared to be in any other manner, the drawer is not obliged to cause pay it, if he is not fully satisfied about the sufficiency of the value, in the interval of time betwixt delivering of the bill and its falling due. However, this decision does not hold generally true, as we shall see afterwards.

THE 2^d distinction is betwixt a bill made payable to such a person simply, or if it be payable to such a person or his order.

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THERE seems indeed to be a good deal of reason in this. For although we sometimes observe that bills are transferred to others, although they be only made payable to such a one simply, yet it is not long ago since such transfers were always made in presence of, and attested by a notary-public, which I judge to have been the reason of introducing these words *or order*, to save the trouble and expence of calling notaries: and reason would seem to shew us, that a man cannot be said to have the property of a bill in his own person, unless he can also dispose of it to another; and that giving away a bill after the agreement is made, makes it become the property of that person to whom the drawer has delivered it. Yet as such a bill cannot be transferred any other way than with its causes and circumstances, all the freedom and exemptions of the drawer remain intire against the bearer, whoever he be, as well as against the person from whom the value is said to be received, because a constituent cannot have

have a better title than his principal, it not being in any man's power to convey a right to another, which he had not himself (a); and the rather in this case, because the drawer hath given no grounds to depend upon him, seeing he hath declared plainly in the bill, that he intended only to deal with that person from whom the value is said to be received.

AND granting the bill was payable to such a one or his order, and should happen to be transferred or indorsed to a third person, yet the drawer hath still the liberty to inquire, whether or not it still belongeth in property to the person with whom he contracted, and from whom the value is said to be received; for every one knows that bills are indorsed daily only in trust, so that the property still remaineth in the person of the indorser: and if it is found really to be so, the drawer's exceptions are still intire; but, if the bill beareth *value received* simply,

(a) Nemo plus juris ad alium transferre potest quam ipse habet.

ply, it would be very difficult to prove the exception of not having received it, because the acknowledgment in the bill itself shows the contrary, and there would scarce be any other way of proving that exception, but by the books or oath of the person in whose favour the bill was granted; but if the bill bore the value expressed in any other manner, which would show that it was not real and effective payment, the exception would be easily proven, being founded upon the bill itself.

BUT then again, if the bill actually belonged to a third person, by virtue of an indorsation, the drawer cannot countermand, nor dispense with the payment of it, in whatever manner the value be declared; because at the time of delivering the bill, he had sufficient faith and trust in the person to whom he gave it; and if it be transferred over to another, he cannot demand it back, for the same reason that one who hath sold a parcel of goods upon credit, can no more dispose of them,

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or demand them back, after they are disposed of, and made over to a third person; because by the contract and delivery they had become the property of the buyer, who might dispose of them as he thought proper, and, by delivering them to another, the property was really conveyed to him, &c. So that the first disposer had lost all manner of title to them. And the same law holds with respect to bills of exchange; for the drawer of a bill really sells or disposes of the credit he had with the person upon whom he draws, which, if he disposes of upon credit, he so far loseth the property of it, that he can no more countermand or dispose of it again, after it is out of the hands of the person with whom he agreed for the value, who was his buyer; and it was none of that person's business who bought it from him, to inquire whether he had paid for it or not: and if the drawer of a bill should by this means come to be a loser, he hath only himself to blame for it, and therefore, in the sense of the law, is not reckoned

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to be a loser (a): and indeed, if it was not so, it would be a very great hardship and injustice, that the drawer of a bill should give occasion, through his fault, to impose upon other people, who purchase and pay for the bills, upon the faith and credit of his draught. So that, from what has been said, we may conclude, that so long as a bill of exchange hath not altered or changed its property, the drawer hath his exceptions whole and intire: but, if the property of the bill be altered by a transfer to a third person, it must then take its course, and be fulfilled according to its tenor, reserving to the drawer action or recourse upon that person with whom he made the contract or agreement.

Thus, having treated at large upon the two persons who contract for a bill of exchange, viz. the drawer and the purchaser, or person who pays the value, the next person concerned in course is

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(a) Quod quis ex culpa sua damnum sentit, non intelligitur damnum sentire.

the bearer, into whose duty and qualifications we shall now examine.

The duty
of the
bearer.

THE 1st thing then, with respect to the bearer of a bill, is presenting it for acceptance; where we must inquire whether he may be obliged to present it, and if he has it in his power to oblige the person on whom it is drawn to accept it?

THE bearer of a bill cannot be obliged to present and get it accepted, but in so far as it concerns the interest either of the drawer, of the purchaser, or of the indorsers, by means of whose indorsation it has come to his hands.

THE drawer has no manner of interest in the acceptance of his bill, because that alone is not sufficient to free him, he being still bound and obliged for the payment at the time it falls due, according to universal custom (a). His interest then

(a) Scribentes litteras cambii semper tenentur ad pecunias in eorum litteris contentas persolvendas, donec appareat fuisse solutas & satisfactas per illos solvere debentes in litteris deputatos.

then can only be concerned in the presentation of such bills as are payable at sight, or at a certain number of days, &c. after sight, that so the time of their falling due may be determined: but for such whose time of payment is fixed by the day of the month, or by usance, or by certain fairs, &c. the presentation is of no manner of service with respect to the drawer.

OUR business then will be to know, if the bearer of a bill of exchange payable at sight, or at any certain number of days after sight, (in case he delays presenting it, within a reasonable time after it comes to his hand) will be found liable for any bad consequences that may attend his delay, so as to lose his recourse against the drawer: which affair will be best explained by an example; wherefore I shall make use of one related by Monsieur Dupuis in his *Art des lettres de change*, which happened in France in the year 1675.

A French

A *French* gentleman, being at *Treves* in the king's service, wrote a letter to his brother, a merchant at *Paris*, in the month of *May* 1675, desiring to draw a bill upon him, at short sight, for 2000 livres. His brother at *Paris* contracted with a banker there, at the rate of 2 per cent. discount; that is, he received 1960 livres at *Paris*, for the 2000 livres to be paid at *Treves*; and accordingly, upon the 12th of *June*, he drew his bill payable eight days after sight, to the order of that banker, for value received. That banker, who had paid the value, negotiated it that same day with another banker upon the same terms of 2 per cent. discount, and indorsed the bill to him.

At that time there was a regular post betwixt *Paris* and *Treves*, which departed twice a-week, and travelled from the one town to the other in five days with all manner of freedom; which posts (as well as a free trade) were open betwixt *Paris* and *Treves* until the 4th of *August*, that the city of *Treves* was invest-

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ed, and afterwards closely besieged and taken. In this interval of time, betwixt the 12th of *June* and the 4th of *August*, the drawer and the first banker who purchased the bill had frequently solicited the other banker, to whom it was indorsed, to forward it for payment, which he told them he had done.

Now although there was a free commerce and open roads betwixt *Paris* and *Treves*, from the 12th of *June* to the 4th of *August*, yet this bill was never presented, either for acceptance or payment; and the *French* gentleman at *Treves*, who had given orders to draw upon him, had kept the money lying by him from the time he had advice of the bill being drawn. The city being taken, and he made prisoner of war, the money appointed for payment of that bill, as well as all the rest of his effects (except his body clothes) were taken by the enemy.— Some time after the taking of *Treves*, the banker to whom the bill had been indorsed brought it back to the

the drawer, demanding restitution of the value &c. because he knew that matters were now in such a situation at *Treves* that he could not expect to receive payment of it.

THE drawer alledged, that he could not be obliged to restore the value, because that banker ought not to have delayed sending away the bill so long; especially considering, that he had been so often sollicitated to do it, and that by this means the fund allotted for payment of it being taken by his negligence, it was upon his risque.

THE judgments of merchants were divided about it. Some were of opinion, that the drawer ought to restore the value; because, the bill being drawn at so many days after sight, the bearer might cause present it when he thought proper, there being no time limited, so that being a banker, or dealer in exchange, he might negotiate it from one place to another as suited best with his conveniency, which perhaps might have been
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to a traveller who was uncertain of the time when he might arrive at that city where the bill was payable; and, if the time was regulated, it behoved to be according to the disposition of that edict in *France* (formerly mentioned) in *May* 1673, which ordains that the bearers of bills of exchange shall be obliged to pursue the drawers of bills that return with protest, within the time limited by that edict, according to the distance of the places: now *Treves* is a city of *Germany*, for which the appointed time of delay is three months; that the common post going in five days was not to be regarded, because a man is not obliged to go exprefs by post to present a bill, but may go with his conveniency.

OTHERS were of opinion, that it being proven that the gentleman at *Treves* had kept the money ready by him, from the time of his having advice of the bill being drawn, until the city was taken, the loss ought to be upon the peril and risque of that banker to whom it
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was indorsed, and who had kept it so long by him.

THIS opinion seems to be the most just and reasonable, if we consider the nature and properties of an exchange-contract, which will be the most certain means to give a just decision, as we shall see by and by.

IT is true indeed, there seems to be some difficulty in the resolution of this question, by reason of its having been at that time almost new and unprecedented; for notwithstanding that several authors have written upon bills of exchange, yet none of them seems to have hit this case. *Segismond Scaccia*, a Roman lawyer, who wrote very fully, in the year 1617, upon all that relates to the commerce of exchange, and who has paraphrased, and made glosses almost upon every word used in the composition of a bill, yet has said nothing of bills drawn at so many days after sight, although he has written of bills drawn at sight, upon a particular

particular day, at usance, &c. which gives us reason to believe, that in his time the practice of drawing bills in these terms had not been introduced.

IN our hypothesis, then, the grand difficulty seems to be to know, whether it be absolutely in the power of the bearer of a bill of this kind to present it at any time he thinks proper, in order to begin the days after sight, and determine the time of its falling due, and if in the mean time all the loss is to be upon the risque of the drawer; or, if the bearer is obliged to present the bill within a certain time, after the elapsing of which the bill is so far upon his risque, that, provided the fund for paying of it was ready in the hand of the person upon whom it was drawn, the bearer has lost his recourse upon the drawer.

To resolve this difficulty, we must have recourse to the principles laid down in the beginning of this treatise, where I shewed, *1st*, That an exchange-contract

is a species of buying and selling; 2dly, That it is a *bonae fidei* contract; 3dly, That it is made for the mutual benefit of both parties who are the drawer and the purchaser, and not for the benefit of any one of them in particular.

TAKING then our maxims from these principles, and applying them to the question in hand, I doubt not but from thence we shall be able to draw a certain conclusion.

FIRST, then, When a contract of buying and selling is complete, and that the feller for his part hath made no delay in delivering the things sold, all the risque or profit that may afterwards arise goes for the account of the purchaser (a). Now, if we apply this maxim to the question in hand, we shall find, that the drawer, who

(a) Quum autem emptio et venditio contracta sit, quod effici diximus, simul atque de pretio convenerit, cum sine scriptura res agitur, periculum rei venditae statim ad emptorem pertinet, tametsi adhuc ea res emptori tradita non sit, &c. quidquid enim sine dolo et culpa venditoris accedit, in eo venditor securus est.

who is the feller, having made no delay on his part to cause deliver to the bearer (who represents the purchaser) the money which was at *Treves*, we must certainly conclude that it was upon the risque of the purchaser, who is supposed to be the bearer.

2dly, IN *bonae fidei* contracts we must judge (*ex bono et aequo*) by interpreting the terms according to equity, and not according to the letter, as in contracts of strict law (b).

BUT to interpret the terms of a bill of exchange drawn at so many days after sight according to equity, it will appear, that the bearer is obliged to present it within a certain reasonable time: for to pretend that he had the liberty to delay the presentation as long as he pleased, would be interpreting it as a contract of strict law, where we are bound up to the very letter; but it would be
contrary

(a) In bonae fidei judiciis libera potestas permitti videtur judici ex bono et aequo aestimandi.

contrary to equity, because, at that rate, the drawer would never be free from his engagement, but would still be liable in all events, how dangerous soever they might be.

3dly, SEEING an exchange contract is made for the conveniency and advantage of both parties contracting, it would be most unreasonable, that the one should reap all the benefit, and enjoy all the liberty, while the other was exposed to all the loss, and enjoyed no manner of liberty: but it is certain, that, if the bearer lay under no manner of obligation to present the bill within some reasonable time, he would enjoy all the benefit, because he might receive payment when he thought proper. If he saw, for example, a prospect of the species of any country upon which he had purchased a bill being augmented, he would hasten, but upon the approach of a diminution he would delay, receiving payment; so that he would have the whole liberty in his hands, and the drawer

drawer would be exposed to all the loss, without enjoying any liberty, since it is not in his power to stop, or delay the payment after the determined time, or to free himself from the damages and interest, &c. in case it be protested, when he hath received the value, or the bill hath been negotiated, as I had occasion to shew formerly. Consequently, then, the obligation must certainly be mutual, that both parties contracting may enjoy their respective benefit; and seeing the drawer is obliged to order payment when demanded, so the bearer is obliged to make his demand within a reasonable time.

It is true indeed, that seeing there is no particular law, that I know of, determining this reasonable time, it requires the more prudence and caution in the judges to whose determination it is left: but one would think, according to common equity, that, if a bill of exchange was given to a person travelling, he should be allowed the double time of the

the journey, and, in commerce, the double time of the common post going betwixt the two places. However, circumstances may alter the case; so that judges are obliged to examine into the particular circumstances, before they can determine in such cases: and now, in this before us, we shall find two remarkable circumstances, which concur to enable us to determine in it agreeably to the principles laid down,

THE one is, That the drawer had given 2 per cent. to have the money received at *Treves*; so that his conveniency was not gratuitous, since he had given the premium to take his bill; which laid a stronger obligation upon the bearer to cause receive the money soon, than if he had given the premium for it, or even than if the agreement had been made at *par*.

THE other circumstance is, That the bearer had been frequently desired and solicited to forward and receive pay-
ment

ment of the bill; by which means he was accusable of a real fraud or trick, for not exacting what he might easily have exacted (a).

THE opinion of there being no limited time when a bill is drawn so many days after sight, is not well founded. For besides what was said above, that, in a contract of buying and selling, the purchaser must run the whole risque, if he doth not receive the thing purchased, when it depended entirely upon himself to have received it, (which of itself is sufficient to destroy this pretended argument); so it is plain, that we must have recourse to equity in the matter of bills of exchange, and moderate the liberty of the bearer, to oblige him to present the bill within a reasonable time, as we see is done in the case of protests: for altho' that regulation, of obliging the bearers of bills to protest them within a certain limited time, is not very old, yet we see it has

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(a) Dolus est si quis nolit persequi quod persequi potest, aut si quis non exigerit quod exigere potest, &c.

now taken place all the trading world over, and was introduced merely by the common equity of the thing itself, since it was most unjust that the bearer should have it entirely at his liberty what time he pleased, and at the same time the drawer be bound, and run the whole risque. Thus it was determined by the parliament of *Paris* the 7th *September* 1630, That as the bearer was to suffer for his negligence, if he did not protest a bill within the ten days of grace allowed in *France*, so it ought to be on his risque when he delays presenting a bill within a reasonable time. Our *English* writers seem to favour this opinion, saith Mr *Hayes* (a): and if the possessor of a bill neglects the necessary diligence for procuring payment, he loses all recourse against the drawer and indorsers, and hath the acceptor only for security. Although he should be failed, yet if it doth appear, that the acceptor had no provision for the payment of the bill, and is not any ways indebted to the drawer, the

(a) Negotiator's Magazine.

the latter must return the value to the possessor, but is not obliged to pay the charges, because of the others negligence; by which we find, that even though the acceptor was not indebted to the drawer, yet the bearer (whom he calls the possessor) is to be punished for his negligence, by losing the charges: but, in our case, the money was actually lying in the hands of the person upon whom the bill was drawn (who is called the acceptor,) so that if it was lost intirely through the bearer's fault, he ought to suffer the loss.

AGAIN, another *English** author says, if a bill was foreign, one could not resort to the drawer for non-acceptance or non-payment without a protest, (now a protest cannot be made without presentation,) and reasonable notice thereof, and the protest was ordained for the benefit of the drawer: for if any damages accrue to the drawer for want of protest, they shall be born by him to whom

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(*) Charles Molloy de jure maritimo.

whom the bill is made; and if no damages accrue to him, then there is no harm done him; and a protest is only to give formal notice that the bill was presented, and acceptance or payment refused.

IN short, that we may omit nothing that occurs to serve for a solution of the question in hand, there seems to be a case in the law (Q. 39. *De solutionibus*) which has some relation to this.

THE question is proposed thus: A certain debtor brings a sum of money, and offers it in payment to his creditor, who refuses to receive it, but orders the debtor to seal it up in a bag, and deposit it in the hands of a banker, until he should examine whether or not the money was good: the lawyer answers, that it must be upon the risque of the creditor, seeing it depended intirely upon himself to have received and examined the money when it was offered him; for at that time the debtor was to

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be considered as in readiness to pay it, and the creditor, either for his own conveniency, or for some other reason with which the debtor had no concern, had delayed receiving it.

Now, from the whole, then, we may conclude, that, both in common-law and equity, the person by whose fault or negligence any sum due is not paid, ought to run the risque, and suffer the loss; and consequently, that though the bearer of a bill of exchange, whose time is limited in the bill itself, (such as usance, &c.) be not obliged to procure acceptance, yet the bearer of one at any number of days, &c. after sight, is obliged to present it within a reasonable time, in order to determine the time of its falling due, or else he must take it upon his own risque, whatever bad consequences may attend it.

HAVING now treated fully upon the first part of the duty incumbent upon the bearer of a bill of exchange, viz. that

that of presenting it within a reasonable time, I come now to speak of his duty in case of refusal to accept, or make payment when demanded, which is, to get the bill protested.

Protests of bills.

A PROTEST is nothing else but a lawful summons, according to the custom of the place where a bill is payable, demanding the person upon whom it is drawn to accept the bill, or, if due, to pay the contents; and, in case of refusal, the bearer must enter a protestation against all concerned, both for the principal sum, and all cost, damages and interest, &c. in order to preserve its right against the drawer.

Form of protests.

THE form of a protest is much the same in all trading countries, viz. That it must contain an exact copy of the bill, with the names of the drawer, the person upon whom drawn, and all the indorsers (if their be any,) together with the reasons of the refusal, and all other necessary circumstances, all which must be

be narrated as plainly and distinctly as possible. But as the manner of taking this instrument of a protest differs a little in different countries, I shall briefly shew the manner of taking it in some of the principal trading places in Europe. And, first, in all Britain and Holland, protests are commonly made by a notary-public, before two faithful witnesses, who either meeting with the person upon whom the bill is drawn, or, if he hath a dwelling-house in the place, going to it, and meeting either with himself or any of his domestics, which is the very same thing, he exhibites or presents the bill before them, demanding acceptance, or payment, if due; and, in case of refusal, the bearer, or any other as procurator for him, protests, by putting money in the hands of the notary, in presence of the witnesses, for exchange, re-exchange, costs, damages and interest, &c. which protest the notary extends, and delivers to his employer, signed by him and witnesses, to take recourse against the drawer, &c.

IN

IN *France*, according to an edict of *Lewis XIV.* in *March 1673*, it is provided, That all protests be made by two notaries, or by one notary and two witnesses, or by one of those whom we call serjeants at arms, &c. And in the 9th article of the same act, it is ordered, that, in all protests, the bill shall be transcribed *verbatim*, with all the indorsations, if there be any, and the answers given for not accepting; and the copy of all, signed by the notary, &c. must be left with the person at whose instance it was protested, upon penalty of losing the expences, damages and interest.

THIS is of very great use; because, by this means, the bearer of a bill, when he advises the drawer of its being protested, can, at the same time, advise him of the reasons for not accepting it, that so he may take his measures accordingly, in order to prevent its being returned, if possible, before the time of payment be elapsed.

AT

AT *Venice*, protests are made by those whom they call *Fanti*, or officers of the college of commerce; and every merchant writes his own protests in a book, kept allenary for that purpose; which seems to be a very useful and commendable practice, because by this means several bills of exchange, which would be returned without acceptance, are frequently accepted and paid under protest, for honour of the drawer or indorsers; because, as was just now observed, every merchant having a register of all the protests in which he hath had a concern during the course of his trade, he can, by having recourse to it, discover whose bills have been punctually paid, and whose not, and so find out the strength and credit both of the drawer and his correspondents, as well as, by frequent dealings, he may know some of the indorsers, and, being assured of their sufficiency, may accept and pay the bills under protest, rather than allow their interest or credit to suffer; which is a service done the person for whose honour

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he doth it, and probably to himself also; because, if he for whom he doth it be a sufficient man, which no doubt he ought to know before he runs any risque, he will be obliged to keep him free of loss; and if he be a man of honour, or even of common honesty, he will do him the like service, if any occasion should offer, and if not precisely in that shape, yet in some other circumstance of trade, which, in the course of business, may be very numerous, as is sufficiently known to those who have had any tolerable experience in commerce.

THUS I have briefly explained the form and manner of making protests in some of the most considerable trading places of *Europe*. Wherefore it will be proper, in the next place, to inquire, Whether a protest made upon a bill of exchange for non-acceptance can produce any effect, and what that effect may be.

Effect of a protest for non-acceptance.

AND, first, we may observe, that in some places it is not the custom to accept

cept bills at all, but only to pay them when due: and in such places a protest for non-acceptance would be to no manner of purpose, seeing it is not in the power of the protester to act contrary to the practice of the place (a): and therefore no other protest can be of use in such places, but that which is made for non-payment when the bill falls due, which only can secure recourse for the exchange, re-exchange, &c. unless that condition be expressed in the body of the bill, That it must be accepted upon presentation; which is sometimes done, but rarely, and only when they are payable in those places where it is not the custom to accept for ordinary. But a protest for non-acceptance of a bill payable at any certain term of payment, or of any other bill, where it is the common practice to accept bills, must certainly have some effect or other; and therefore we shall endeavour to inquire what that effect may be.

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(a) Protestatio non prodest in his quae a potestate protestantis non dependet. See.

THAT effect is not always the same, but differs according to the practice of the place where the bill is payable. For example, if it be payable at any fair, such as *Lyons, Frankfort, &c.* the bearer may forthwith redraw, not only for the principal bill, but also for the interest and damages, such as the charges of protest, port of letters, &c. But if a bill is payable in a place where there are no such fairs or payments, or if it is not made payable at these fairs where they have them, but at usance, 2 or 3 usance, or any other stated time, then the bearer cannot redraw upon a protest for non-acceptance, or oblige the drawer to return the value, or any damages and interest, &c. until he has made a protest for non-payment after the bill is fallen due: the reason of which is, that at that rate the bearer would be reimbursed before the time that was agreed upon for his receiving the money, and that too whether the drawer had a mind or not; which is not putting them on an equal level, notwithstanding of the contract being

being voluntary, and for their mutual benefit, and therefore (according to our former principles) is contrary to equity, and consequently to the nature of an exchange-contract.

FROM this then it follows, that all that can be done by virtue of a protest for non-acceptance of a bill payable at usance, or any other time limited in the bill itself, is to oblige the drawer to give sufficient caution or security that it shall be paid when it falls due: but in case of his refusing to comply with that demand, then he may be forced by law to restore the value, without waiting the time of the bill's falling due; because the protest for non-acceptance gives reasonable cause of presumption that the bill will not be punctually paid, and the drawer has no other way of removing this presumption, but by giving sufficient security for the contrary.

THUS having shewn what effect a protest for non-acceptance may have, we shall

shall now suppose, that a bill of exchange is to be accepted, and describe the manner of doing it, as well as the meaning and use of it.

Accepting bills.

To accept, according to the common use of the word, signifies nothing else but to receive any thing that is in a man's offer, such as to accept of any present, or to accept of any place or office, &c. by which is meant no more than to receive it with thankfulness: but to accept a bill of exchange hath a quite different meaning, since thereby the person accepting becometh debtor to the bearer for the sum contained in the bill. Wherefore I think the word *accept*, when applied to a bill of exchange, may be thus paraphrased: *I accept of this order as a sufficient obligation upon me to pay the contents to the bearer thereof at the time therein mentioned; in testimony whereof I hereto subscribe my name, and deliver it back to you the bearer as a security against me until it fall due.*

FOR

FOR all bills drawn at usance, or at 2, 3, &c. usance, or at any other stated time, which can be determined by the bill itself, such as so many days or weeks after date, or upon such a particular day, as the 10th, 15th, 20th, &c. day of such a month; I say, in accepting bills of this kind, there needs no more than simply to write down the word *accepts*, or *accepted*, and then subscribe the name: but when bills are drawn payable at so many days or weeks after sight, (which frequently happens,) then the person accepting must add to his acceptance the date of which he accepts it; because the bill does not begin to run until the day after the acceptance, and consequently, unless the date of the acceptance be added, the time of its falling due cannot be determined.

THUS I have shewn the meaning and manner of accepting a bill of exchange, by which, as was said above, the acceptor becomes principal debtor to the bearer, and the drawer remains, as it were,

were, cautioner or surety for the payment. But there are two cases which seem to be exceptions from this rule, and in which the bearer can reap no manner of benefit by the acceptance, nor hath he any action against the acceptor, neither would a protest entitle him to have any recourse against the drawer.

THE *first* is, when the person on whom the bill is drawn happens to be a creditor of the person who purchased it, and paid the value; in which case he may accept the bill to pay the contents to himself, it being just and reasonable that he should be paid himself, before he be obliged to pay a sum to his debtor, or to any other whose right is derived from him: for the bill is only a compensation of what was due to him by the person who paid the value (a); and this compensation is really making payment (b), provided what is due to him

(a) Ideo compensatio necessaria est, quia interest nostra potius non solvere, quam solutum repetere.

(a) Qui enim compensat, solvit. Rot. Gen.

be upon such a footing, as to be capable of compensation.

ALTHOUGH this is a common practice in *Italy*, at *Lyons*, and some other places, founded upon reason and equity, authorized by sentences of merchants, and confirmed by statutes; yet those who have not heard this question examined into, may have some difficulty, at first view, to comprehend the justice of this manner of accepting. But, as it is agreeable to our principles, it will be proper to demonstrate the evidence of it, in order to remove all cause of doubt.

It is certain, as I had occasion to shew formerly, that the contract of exchange is made betwixt the drawer and the person who pays the value: for neither the bearer, nor the person on whom the bill is drawn, who are both in another place, have given any manner of consent to the bargain at the time of making it; and consequently the drawer, and he who gives the value, are the chief parties,

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and the bearer is to be considered in no other view but the two following, viz.

1st, As substitute to receive the payment, and, as it were, a procurator for the person who paid the value (a); or,

2^{dly}, As proprietor of the bill.

If we consider him in the first view, as substitute of the person who paid the value, then it is plain, that the person on whom the bill is drawn may oppose the same compensation to him that he could have opposed to his constituent who paid the value (b); but it is certain, that if the person on whom the bill is drawn be a creditor of him who paid the value, then the compensation is made according to equity and law.

BUT, if we consider the bearer as proprietor

(a) Dum solvitur adjecto dicitur solvi creditori, quia reputatur procurator creditoris. *Scac.*

(b) Negotium praesumitur pertinere principaliter ad eum qui numerat pecuniam, quia praesumitur pecunia sua, et appositus solutio- ni videtur adjectus tanquam simplex procurator. *Scac.*

prietor of the bill, he can be so by no other means, but by the mediation and disposition that is made to him by the person who paid the value, without which the bill would never have been drawn: but it is a maxim in law, that a substitute cannot be in a better condition than his constituent, from whom his right or title is derived (a); and consequently, if he who paid the value could not hinder this compensation, neither could the bearer, who had no other title but what was derived from him.

AND even although the bearer should pretend that the value was paid with his money, yet he could not hinder the compensation, unless it was expressly declared in the bill itself; because the bill is never supposed to belong to any other but to him from whom the value is said to be received.

NAY, farther still, although the bearer

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should

(a) Non debeo melioris conditionis esse, quam author meus, a quo jus in me transit.

should be able to prove, that he had put effects in that persons hands, and ordered him to take bills of exchange for the value, that could only reserve an action to him against the person who paid the value, as being his commissioner or factor, whose faith he relied upon, but would by no means hinder the compensation of a bill, which could not belong to him, but by means of the person who paid the value for it.

So that I think I have made it appear evident, that the person on whom a bill is drawn being a just and lawful creditor of him who paid the value, he may accept it payable to himself by way of compensation.

THIS question being so far clear, it will be proper, in the next place, to inquire, Whether or not the bearer can oblige that acceptor to justify or prove his credit in the terms of the compensation he pretends; and, in case of his not being able to do so, If he can make such a conditional acceptance to pass for pure and simple.

If

If the bearer has no proper interest in the bill, then he cannot demand such a proof, without an express procuration or factory from him who paid the value; because one who hath no interest can have no action at his own instance, but must act in name of that person who paid the value, and whose property the bill is.

BUT if the bearer is really the proprietor of the bill, after having proven his property, he may oblige the acceptor to justify or make out his credit: but to do that in due form, it will be proper the person who paid the value, who either is the real or presumptive debtor, were present; and therefore it ought to be pursued, and diligence done in name of the bearer, as being employed by him.

BUT now, as it is a maxim, That no compensation can be made, unless the sum be liquidated, it will perhaps be proper to shew what credit may be said to be liquidated,

liquidated,

liquidated, and consequently capable of compensation, to remove the equivocation of those who imagine that a credit is not liquidated, unless it be established by formal diligence, such as a sentence of a judge, an act passed before notaries public, a bill of exchange accepted or protested, &c.

When a credit may be said to be liquidated.

A CREDIT, then, is held as liquidated, when the extent or sum of it is certain, a liquidated and certain sum being synonymous words, as will appear by the law (a).

AND even a credit, whose sum is not certain, may notwithstanding be said to be liquidated, provided it be in such order as that it might speedily be liquidated. (b).

So that it is evident, there is nothing else requisite to make any credit liquidated,

(a) Cod. de sent. quae sine cert. quant. prof.

(b) Pro liquido tamen habendum est, quod in promptu liquidari potest.

liquidated, but the certainty of the sum, without any title of execution; because a debt purely natural may enter into compensation; as may also an action or depending process.

IN whatever manner, then, the credit be, provided the extent or sum of it be certain, it may be compensated; and it may be proven, either by the debtor's oath, or by his simple acknowledgment by his letters, or by any other lawful proof whatever.

BUT after all that has been said, yet we may observe, that if there be a fixed term or day agreed upon for paying the sum, then there can be no compensation demanded until that day be come: *Quod in diem debetur non compensabitur antequam dies venit, quanquam dari oporteat.* The French have a common proverb to that purpose, *Qui a terme ne doit rien*; the meaning of which is, That one cannot properly be said to owe any thing

thing until the day of payment be come.

FROM the whole, then, I think it is plain, that provided the person upon whom a bill is drawn be creditor for a certain sum, or that it is in readiness to be ascertained, and the day of payment be come, supposing all this to be proven, I say, he cannot be hindered to accept the bill payable to himself by way of compensation, and the bearer has no recourse against the drawer, but must do the best he can to recover the value from him who paid it, provided he the bearer be the proprietor.

THE *second* case in which the bearer of a bill cannot receive the payment, nor have recourse against the drawer, is, when some creditor of the person who paid the value hath, by judicial authority, arrested whatever may be due in the hands of that person upon whom the bill is drawn, before it hath been presented for acceptance; in which case he
may

may either refuse to accept, or accept it payable, according as the course of law shall determine: and, if the reasons of the arrestment are found to be just and lawful, it is not in the bearer's power to hinder the effect of them, for the reasons mentioned above, in the case of compensation. For it is certain, that the person who paid the value of the bill is the real proprietor until it be accepted; that he can transfer no better right to another than he had himself (*a*): and therefore, as he could not hinder the effect of the arrestment himself, so neither can the bearer, whose right is derived from him.

IN all other cases, except these two mentioned, the acceptation always obliges the acceptor to pay the bearer, either purely and simply, agreeable to the tenor of the bill, or upon several conditions, or with different restrictions, either with respect to the time of payment, or the sum to be paid; for the acceptor hath it in his
S power

(*a*) Nemo plus juris transferre ad alium potest quam ipse habet.

power to add any condition or restriction to his acceptance that he pleases, either for diminishing the sum or prolonging the term of payment, or under protest for honour of the drawer, of him who paid the value, or any indorser, as he shall find convenient: but then, in all cases whatever, where the acceptance is not pure and simple, agreeable to the tenor of the bill, without any manner of condition or restriction, either as to the term or form of payment, or the sum to be paid, the bearer, upon his risque and peril, is obliged to protest; which if he does in due time and form, the drawer, or the person for whose account the bill was drawn, will be obliged to repair all the damages that may be incurred by these conditional or restricted acceptations, still reserving to him recourse against the acceptor, in case it shall be found that his restrictions or limitations were made without just and lawful grounds.

BUT now I would have it observed,
that

that I have been talking of the practice of *Italy* and some other trading countries, where these limited and conditional acceptations are allowed: but in *Britain* there is no such thing now practised, it being abolished by an express law; so that whoever accepts a bill, let him add what restriction or limitation he pleases, yet he will be found liable according to the tenor of the bill: nay, if a man upon whom a bill is drawn should refuse to accept, and yet, either by mistake, or of design, write any thing upon it, tho' he doth not formally accept it, that is looked upon as an acceptance; because, if he had no mind to accept, he ought to have returned it in the same condition he got it, without spoiling or defacing it. And therefore, when one upon whom a bill is drawn will not accept, agreeable to the terms of the bill, his safest way is, first to allow it to be protested for non-acceptance in its precise terms, and then he may accept under protest, adding what limitation or restriction he pleases, and will

be found liable for no more than according to his own acceptance: for the protest shews, that he refused to accept in the terms of the bill; and the bearer taking it on his terms, shews, that he agreed to his accepting with the restrictions he proposed. The protest secures to the bearer recourse against the drawer for any damage he may sustain by the difference, whether of the sum, or term of payment; and, by virtue of the same protest, the drawer will make them good against the acceptor, if, upon a fair trial, his exceptions are found to be groundless.

AND now, before we leave this subject, it will be proper to enquire, Whether the bearer of a bill be obliged to take an acceptance of it with limitations, after having protested for the difference; Or how far it may be safe and prudent for him to do so. And this I shall endeavour to illustrate by an example.

If the bearer of a bill be obliged to take an acceptance with limitations,

I suppose then, that I have a bill remitted me upon a person in the same place

place where I reside, for *L. 100 Sterling*; and, upon presentation, the person upon whom it is drawn tells me he cannot accept, as having only provision for *L. 80 Sterling*, or for whatever reason he pleases to alledge; and therefore he proposes to accept for *L. 80.* in case I am satisfied with such a limited acceptance. In this case, I am not absolutely obliged to agree with the proposal, but may protest, and return the bill for recourse; which is all that either law or the practice of merchants absolutely obliges me to. But when I consider, that his accepting is an additional security for the *L. 80,* so that my risque is at least *80 per cent.* less than it was, having now two persons bound for *L. 80,* whereas before I had only one bound for *L. 100,* viz. the drawer, and if I am not very well assured of his being a very sufficient man, it is certainly the most prudent course: for, as two securities are better than one at any rate, I chuse to take them for as much as I can; and therefore I first protest for non-acceptance in the

the terms of the bill, and then take it accepted under protest for the L. 80.

THE protest preserves my recourse against the drawer for the whole, in case the acceptor does not pay it, and for the difference, in case he pays according to the restriction in his acceptance; and it is likewise doing a service to the drawer, because it preserves his right and recourse against the acceptor for the difference, in case he be able to prove that the limited acceptance was groundless.

So far we see, that this is the safest and best course, when I am proprietor of the bill myself; but if we suppose, that the bill is only remitted to me in trust, for account of my correspondent, the case is still the same; because both law and common equity obliges me to act with the same diligence and caution for behoof of my employer, as I would do for my own proper account.

AND the same rule will still hold, if we

we suppose, that the bill is drawn at one usance, and the person on whom it is drawn will only accept it payable at two usance, or any other longer time; because the protest reserves a recourse for any damages that may be sustained with respect to the time of payment, as well as of the sum to be paid.

THUS, I think, I have finished what I proposed upon simple and limited acceptations: and, as I have had occasion to mention that of accepting under protest, we shall next take that under consideration, and shew what is meant by it, and the manner and reasons of such sort of acceptations.

It happens frequently, that the person on whom a bill is drawn will not accept and pay it; or, at least, he will not accept in the terms of the bill, and agreeable to the orders he hath received.

Accepting under protest.

HE will not accept at all, when he hath no effects of the person's upon whose account

account the bill is drawn, and will not trust to his credit; or it may be, that he hath of his effects, or would be willing to credit him, but hath received no orders from him, and is not willing to trust to the faith of the drawer.

HE will not accept in the terms of the bill, and agreeable to the orders he hath received, when he has no orders from the person for whose account it is drawn, and hath none of his effects, and will not trust him, but is willing to trust to the faith of the drawer.

IN order to make this affair as clear and distinct as possible, it will perhaps be best to form an example of it.

LET us suppose then, that a certain merchant, residing at *Amsterdam*, draws a bill of exchange upon another who lives at *London*, by order and for account of a third person at *Edinburgh*. He at *London*, upon whom the bill is drawn, hath no orders from him in *Edinburgh*, for whose

whose account it is drawn, or hath none of his effects, and will not trust his credit, and likewise perhaps knows nothing of the drawer; and so, not being willing to put faith in him, refuses to accept. This would occasion the bill's being protested, and returned for recourse; which would do much prejudice to the drawer, to him who paid the value, and also to the indorsers (if there were any,) both with respect to their reputation and interest, because of the charges and damages, &c. which sometimes come to be very considerable.

To prevent such losses and inconveniencies as these to those concerned in bills of exchange, traders have introduced this practice of accepting under protest, which is now universally known in all places of trade; and it may be done by any one who pleases, either by him upon whom it is drawn, by the bearer, or by a third person who hath no concern in it.

FIRST, then, let us suppose, that the person upon whom it is drawn will not
T accept

accept *simpliciter* in the terms of the bill; but is willing to accept upon certain terms of his own naming; then the manner of doing it is this.—

FIRST, There is a protest made in the following, or some such like form. After copying the bill, with the indorsations, &c. if there be any (as was shewn when speaking of the form of a protest,) then the notary adds, Which bill being presented to such a person (naming him) he answered, that he would not accept it purely and simply in terms of the bill, either for want of provision, for want of advice, or for any other reason he pleaseth to alledge; but that he accepts it under protest, either for honour of the drawer, of the person who paid the value, or of the indorser, or any one of the indorsers he pleaseth to name, in case there be more than one: and then he accepts the bill, adding to his acceptance these words, Under protest, for honour of such a person, (naming him,) and dates, and signs his own name.

BUT

BUT if it be the bearer who accepts under protest, then must be added, after the protest in the common form, But the said such-a-one (bearer of the said bill) hath accepted it payable to himself, either for honour of the drawer, or of any other concerned whom he pleases to name.

BUT if it should happen to be a third person who accepts, then after the ordinary clauses of protest must be added, But such a person (naming him) comparing, hath declared before me notary-public, &c. that he will accept the same for honour of such a person; and then he accepts it under protest, for honour of any one concerned as he thinks proper.

THIS practice is now become universal through all trading places, and is of such force and efficacy, that the drawer is still engaged for the payment, as much as if it had actually been accepted in terms of the bill.

T 2

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HE who accepts and pays a bill in this manner under protest, doth a service to all concerned, by preventing its being returned, and, at the same time, is sufficiently secured himself, because this reserves to him recourse by action, not only against the person for whose honour he paid it, but also against all others who are bound to that person. For example, if he pays it for honour of the drawer, then he hath only recourse against him, because he is the fountain; so that, if he fails, there is no more to be done: but if it is paid for honour of him who paid the value, then he hath action against him, and also against the drawer, as being bound to him: and if it be paid for honour of an indorser, then he hath recourse against that indorser first, next against the person who paid the value, and lastly against the drawer. But further still, if there are several indorsers, and the bill be paid for honour of the last, he who paid it hath action against all concerned, either indorsers, the person who paid the value, or the drawer:

drawer: for every one concerned in a bill of exchange is, as it were, cautioner or surety for another; and the drawer, who is always the last man, is surety for them all, and is still bound, until there be a final discharge of the whole.

BUT then it is observable, that though a person who pays a bill under protest for honour of any concerned be sufficiently secured, as I have just now shewn, yet he hath not a privilege to draw upon any place he pleaseth for his reimbursement, as the bearer of a bill may do, when it is simply protested, and returned for not-payment. For when one pays a bill under protest, he is obliged to advise that person for whose honour he doth it with the very first conveniency, and ought not to draw for his reimbursement until he hath actually paid the money; and even then he is to draw directly upon that person for whose honour he pays, unless he receiveth his orders to draw upon some other person, or upon some other place, that may be more

The privilege of a person who accepts and pays a bill under protest

more commodious for him, in case there be no opportunity of drawing directly upon himself. The reason of which is, that when one man doth an action voluntarily to serve another, he ought to do it to the best advantage he can for behoof of that person he is serving, without any view of interest or benefit to himself: but it would not be doing it to the best advantage, if he delayed advising him of what passed; because, by that delay, the person upon whom he had a lawful recourse might happen to fail, and by that means he might be deprived of the opportunity of recovering his money; and if he should re-draw by several distant places, it would heap up great charges of exchange, &c. and consequently render the discharging the bill dearer and more difficult, which is contrary both to law and justice.

FROM what hath been said we may observe, that one who pays a bill under protest is not invested with all the privileges that the bearer hath when it is simply

simply protested, and returned; at least, not upon all occasions; for when one pays a bill under protest for honour of the drawer, he hath no recourse against either indorsers or the person who paid the value, but only against the drawer for whose honour he paid it: and therefore, when any man has a mind to pay a bill under protest, although he may have a view of serving the drawer principally, yet his safest way is to mention in the protest the last person concerned, such as the indorser, or, if there be more than one, the last indorser, which reserves his recourse first against him, and then against all that are bound to him, either as being indorsers, as paying the value, or as drawer.

WHEN a bill of exchange is drawn by one man upon another, for account of some third person, and he upon whom it is drawn will not accept, or pay it in terms of the bill, but hath effects of the drawer's, and designs to pay it for his honour; then he accepts under protest,

Accepting
to be pla-
ced to ac-
compt.

test, to be placed to accompt; that is, he doth not design to redraw for his reimbursement, but is to place the payment to accompt of the drawer, and by the protest reserves to him recourse against that person for whose accompt he drew the bill.

Freely,
or under
protest

SOMETIMES it happens, that the person on whom a bill is drawn inserts in his acceptance, *Accepted freely*, or, *Under protest*; which is done in two different cases. First, when a bill is drawn for account of some particular person who hath no effects in the acceptor's hands, but he hath some expectation of having provision by the time of the bill's falling due: and, by accepting in this manner, he declares, That, in case the expected fund comes to his hand, he pays the bill freely, agreeable to the terms in which it is drawn; but, if the fund doth not answer, he pays it for honour of the drawer, and keeps him bound for his reimbursement. The second case is, when the acceptor hath effects of that person's
for

for whose account the bill is drawn, but hath got no orders from him to accept such a bill; in that case, he accepts in these terms, under an uncertainty whether he may receive orders or not: by which is signified, That, if he receiveth orders, he pays it freely in the terms it is drawn; but if no orders come, then he pays it under protest for honour of the drawer.

I HAVE already said, that any one who hath a mind may have the privilege of accepting a bill under protest, whether it be the person upon whom it is drawn, the bearer of the bill, or any other indifferent person. But now, it may be worth our while to enquire, which of these three ought to be preferred, supposing them all to be willing at the same time to accept, and pay a bill under protest.

Who
ought to
to be pre-
ferred in
accepting
under pro-
test.

IN the *first* place, then, if there be any person in the place where the bill is payable, who hath orders, either from the
U
person

person for whose account the bill is drawn, or from the drawer by that person's direction, he who hath such orders is to be preferred to all others; because he for whose account it is drawn is the master, and may order himself to be kept from harm by any one he pleaseth.

Secondly, If any one hath orders from the drawer for his account, he ought to be preferred to any other who hath no orders.

In the *third* place, If the person on whom the bill is drawn offers to accept it in the form last mentioned, *viz.* freely or under protest, he ought to be preferred, because of the probability there is of his paying it freely when it falleth due: and even although he should accept it to be placed to accompt, yet he ought to be preferred; because by that means he saves to the drawer the charges of returning the bill, and consequently doth his business to more advantage than any

ny other, who might need a recourse for his reimburfement.

Fourthly, If the person on whom the bill is drawn will accept on no other terms than under protest for honour of the drawer, and if at the same time the bearer be willing to accept it himself, likeways for honour of the drawer; then the bearer is to be preferred, and next to him the person on whom it is drawn, and after him any indifferent person whatever (*a*).

In the *fifth* place, A man who is willing to accept for honour of the drawer, ought to be preferred to one who is willing to accept for honour of the person who paid the value; and again, he who is willing to accept for honour of the person who paid the value, is to be pre-

U 2

ferred

(*a*) Declaro, tertio, Ut facultas solvendi supra protestum competat gradatim hoc ordine: Primo, Competit illi qui vult solvere libere, quisquis ille sit; hic enim prefertur omnibus volentibus solvere supra protestum. Secundo, Competit illi qui debet cambium recipere. Tertio vero loco, Competit illi cui facta est tracta. *Scacc.*

ferred to him who would accept for honour of an indorser.

IN short, one who will accept for honour of a first indorser, ought to be preferred to one who would accept for honour of a *posterior* indorser; and the reason of all this is, That that person ought always to be preferred, who by his acceptance extinguisheth the manyest obligations.

Now, although a man who pays a bill under protest, by his so doing frees that person for whose honour he doth it, and hath just and legal recourse against him, notwithstanding of its being freeing a debtor without his own consent, because it is supposed to be done before he knoweth any thing of it; yet if one who is willing to pay a bill under protest for honour of any concerned, adviseth that man for whose honour he is to do it, and receiveth his answer, intimating, that he doth not incline it should be done: in such a case, I say, as that, he ought

ought not to pay it under protest; and if he does, he would have no recourse by an action against the person for whose honour he pays it (*a*).

WHEN the drawer of a bill is publicly known to be bankrupt, it is not lawful for a man to accept his bills, either freely, or under protest (*b*). And the case is the same in accepting under protest, for honour of the person who paid the value, or for honour of any indorser, after his bankruptcy is publicly known; because that would be giving an opportunity to favour the bearer, and those who are bound to him, to the prejudice of the drawer's creditors, which if they discovered, they could revoke all deeds done to their prejudice.

THUS

(*a*) Nam tertius potest solvere, ignorante et invito debitore, quando debitor non est presens, et non prohibet; sed si adsit, aut prohibeat, male iste tertius solvit, et ob id nulla ei acquiritur actio contra ipsum debitorem. *Scacc.*

(*b*) Declaro, quinto, Ut post habitam notitiam, seu publicam vocem et famam, de decoctione trahentis debitum, nemo possit illam tractam acceptare, nec libere, nec super protestu. *Scacc.*

THUS I have considered both the reasons and manner of accepting bills under protest; and shall, in the next place, inquire, Whether a person who has once accepted a bill of exchange hath it in his power to retract, and if the drawer be freed after the bill is accepted.

If one who hath accepted hath it in his power to retract.

As to the *first*, As the acceptance is an engagement to pay the bill, the question is to know, Whether a man who hath accepted has it in his power to retract, either because he hath not received the fund expected, or because the drawer having failed, or perhaps because he hath got *posterior* orders, countermanding the draught, or for any other reason he may alledge.

THE general rule is, That a man who hath once accepted a bill cannot retract, nor prevent his being obliged to pay it (a): for, in case he had not provision, or was

(a) Quaero XI. An is qui acceptavit solvere litteras Cambii possit paenitere, et recusare earum solutionem, praesertim si, post transmissas ad se litteras, is qui litteras facit decoxerit? Respondeo, Quod

was not well assured of having it in due time, it was in his own power not to have engaged himself; but, having once engaged himself by his acceptance, it is to be presumed that he trusted to the faith of the drawer, whose circumstances he either did or ought to have known before he engaged (a).

As for the drawer, it is not in his power to countermand payment, after the bill is accepted; nor would it be to any purpose if he did, because then the circumstances are altered, and quite different from what they were before accepting.

BUT now, notwithstanding of this general rule, there seemeth to be one case, which may be called an exception from it; and it is this:—

IF

Quod, acceptatis litteris, non potest illarum solutionem recusare, quamvis debitor decoxerit. *Scacc.*

(a) Qui cum alio contrahit, vel est, vel debet esse non ignarus conditionis ejus.

IF a bill of exchange be drawn immediately before the drawer happeneth to turn bankrupt, and has been sent in any extraordinary manner to procure acceptance sooner than it could have been done, had it been sent by the common and ordinary conveyance, so that the drawer's bankruptcy might have been known before the acceptance; in this case, I say, the acceptor may justly be freed, and discharged from his acceptance, because he was surpris'd, and brought into the scrape by a kind of fraud and cheat, which is condemned and punishable by law (a).

WE see then, that different circumstances will alter the nature of a transaction, so far that it may be determin'd according to equity, without keeping up to the rules of strict law; and especially in commerce, where equity, and the practice of merchants, is more to be observed than the letter of the law. And,
now

(a) Quae dolo malo facta esse dicentur, si de his rebus alia actio non erit, et iusta causa esse videbitur, iudicium dabo, &c.

now that we are upon this subject, there is a case which actually happened, and consequently may happen again in the way of commerce, and which, by its circumstances, gave occasion to retract after acceptance; wherefore it may perhaps be worth while to consider it in this place.

IT is to be observed then, that there is a practice which hath prevailed very much in all trading places, that when bills are presented for acceptance, in case the persons upon whom they are drawn be from home, or not at leisure to accept forthwith, the bearers have been in use to leave them till next day, and sometimes for two or three days, when the persons upon whom the bills are drawn are men of sufficient credit. It is this practice which gave occasion for the two following cases; because, during the interval of time that the bills were left with the persons upon whom they were drawn, they had advice of the drawer being broke; and as they had ac-
tually

tually written upon the bills, *Accepted* such a-day, but had not delivered them back to the bearers, they pretended to disengage themselves from their acceptance, but by different methods.

THE first delivered back the bill, but scratched out the acceptance which he had written upon it, which gave occasion for a process. The bearer maintained, That the person upon whom a bill of exchange is drawn, having once written upon it the word *Accepts*, could not lawfully retract, or scratch out his acceptance; and that he was thereby as much bound to pay it, as if he had not erased it; building upon this maxim of law (a). And indeed, I am of opinion, that this would have been a sufficient plea in *Britain*, by reason of an act which I had occasion to mention when treating of limited acceptations.

THE person upon whom the bill was drawn

(a) Quod semel placuit amplius displicere non potest.

drawn alledged in his defence, That the engagement of accepting a bill was not complete until it was actually delivered back to the bearer; that till then, he was master of his own subscription, and might dispose of it as he thought proper, either by retracting from it, or erasing it as he had a mind; building upon this maxim (a). And, in effect, he was foilzied and discharged from his acceptance upon these grounds: That, when two persons are engaged in a contract, and the one hath actually signed in presence of a notary-public, yet he hath it in his power to erase or cancel his own subscription, so long as it is not signed also by the other party; and therefore it was determined, that, still with better reason, a man who is master of his own subscription, may cancel it in what manner he pleaseth, so long as it is in his own custody.

THUS was that affair decided, though

X 2

I

(a) Fallit haec regula, ex causa supervenienti, vel de novo adpositam pervenienti.

I am afraid, that an *English* judge would have declared in favour of the bearer: and I must acknowledge, it seems to have been a hardship upon him, when we consider, that it was owing to a piece of civility, to which he was no otherways obliged than by common practice, that the bill was not in his possession accepted, before the acceptor had advice of the drawer's failing.

IN the other case I proposed to mention, the acceptor, it seems, either did not think of cancelling his acceptance; or did not imagine himself safe to do it; and therefore thought proper to tell the bearer, when he came to demand back the bill, that it had fallen by, and desired him to send for the second bill; no doubt, with this view, that he might thereby procure a delay, and then the drawer's bankruptcy would be public, which would be a sufficient ground for him to refuse acceptance.

THE bearer was not satisfied with this conduct

conduct, and therefore raised an action against him, which he carried, and procured sentence; it being the opinion of the judge, that his keeping up the bill implied a tacit acceptance, and in consequence thereof the person upon whom the bill was drawn was condemned to pay the money.

THIS sentence seems, in my opinion, to be better founded than the other, and is agreeable to a maxim of *Scaccia's*, *Acceptatio fit tacite per receptionem et retentionem litterarum.*

So much for the *first* head proposed; and therefore we come next to consider, Whether the drawer of a bill of exchange is freed from his engagement after it is accepted.

I am ready to imagine, That the bankruptcy of some acceptor hath given the first rise to this difficulty, and consequently been the occasion of the question; because, if the drawer is free after acceptance,

Whether the drawer of a bill of exchange is freed from his engagement after it is accepted.

tance, it would follow, that, in case of the acceptor's failing, the bearer would run the risque; but if the drawer be not freed by the acceptance, then, in case of the acceptor's failing before the bill be paid, it would be upon his risque and peril.

THERE have been two different opinions about this question.

THE *first* is, That the drawer ought to be looked upon as liberated from his engagement by the acceptance of the bill: and those who have embraced that opinion maintain, That the bearer having taken a promise of payment from the person upon whom the bill is drawn, by his acceptance, hath, by that transaction, made a kind of new contract, dissolving the first obligation entered into by the drawer; for which they produce a quotation from an author frequently mentioned in this treatise (a).

BUT

(a) Si campfor absque delegatione promittat, per haec verba

BUT the second opinion, *viz.* That the drawer is not at liberty after the bill is accepted, but remains still bound until it be fully paid, hath prevailed, being embraced by the best authors, and confirmed by the judgment of the most celebrated courts of judicature (a.)

AND the reason of this opinion and judgment is, that the acceptance is no new contract betwixt the acceptor and the bearer, to whom the payment ought to be made (as was alledged,) but only a part of the first contract made at drawing the bill; for the bearer doth not take the acceptance, but upon condition that the bill shall be paid: whence it is plain, that the bearer doth not absolutely rely upon acceptance of the bill, since the

promitto tibi loco Titii, Titius erit liberatus; quia qui eligit n-
num debitorem, pro alio novare videtur, &c. Scacc.

(a) Quaero X. Numquid debitor cambii fit liberatus eo ipso,
quod ille cui mittuntur litterae solvenda acceptat illas litteras?
Respondeo, Debitorem, qui litteras fecit, non esse liberatum, &c.,
nisi ipsae litterae sint realiter solutae.

the contract was made before with the drawer, who is the first debtor, and therefore bound until the bill be paid.

It is not in this case, as it would be in case the bearer had been negligent in procuring acceptance, or had taken any limited acceptance, (as I had occasion to observe formerly); for then the person by whose fault the damage happened, is to run the risque; but provided the bearer doth his duty, then the drawer must be bound, and liable until the payment be completed.

Whether
the accep-
ter of a
bill of ex-
change
may pay
it before
it falls
due.

THE next thing necessary to be inquired into is, Whether the acceptor of a bill of exchange may pay it before it falls due, contrary to the inclination of the bearer; which question doth not seem to have been fully handled by any of the old writers upon exchange, notwithstanding that the frequent rising and falling of money in some countries gave occasion to toss it among traders, and especially during the late confusions in Europe, by that pernicious commerce of stockjobbing,

stockjobbing, particularly in France, where a man was not sure of ascertaining the value of his species for three days successively: wherefore we shall endeavour to consider this affair agreeably to the principles of exchange already laid down, and come directly to the question.

THOSE who are of opinion, that the acceptor may pay before the bill fall due, whether the bearer incline or not, found their argument upon that part of the law *de verborum obligationibus*, where *Ulpian* says, that there is a difference betwixt an incertain and a certain day: which difference appears from this, that what is promised upon a certain day may be paid immediately; because all the time interveening betwixt the promise and payment is in the cōtion of the debtor; but a man who promises upon such a condition, or when such a thing shall be done, if he gives what he promised before the condition is per-

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formed,

formed, he cannot properly be said to fulfil his promise.

THEY draw the same arguments from another part of the law, where *Celsus* saith, that what is promised upon a certain day may be given immediately, because the debtor hath it left in his option to pay when he pleaseth (a).

THOSE who are of opinion, that the bearer cannot be obliged to receive payment before the bill falls due, build upon another maxim in law, from which the doctors draw this maxim, That the debtor cannot free himself, by his offering to pay in a place and at a time which it would be improper and inconvenient for the creditor (b).

THAT we may come to some resolution about

(a) Quod certa die promissum est, vel statim dari potest; totum enim medium tempus ad solvendum promissori liberum relinqui intelligitur.

(b) Hujusmodi obligatio debitori non prodest, offert enim in congruo loco et tempore.

about these two opinions, and reconcile those parts of the law, which, at first view, may perhaps seem opposite, we must follow the sentiment of a commentator (a) upon that passage last mentioned, and of Monsieur *Faber* in his *cod.* † who say, That if the time be made either in favour of the creditor, or for behoof of both parties, then the debtor cannot pay before the time, but must wait until the debt become due, that so he may diminish nothing from the right and privilege of the creditor.

Now, by applying this maxim to a bill of exchange, which is a contract made for the mutual benefit of both parties contracting (as I have had occasion to shew at large, all the conditions of the time and place are in favour of both; so that the bearer, who derives his right and title from the person who paid the value, (as I proved formerly), cannot be

Y 2 obliged

(a) *Bartholm.*

† *Lib. 8. tit. 3. defn. 14.*

obliged to receive the payment sooner than the time limited by the bill.

THUS Monsieur *Cujas*, in explaining that passage formerly mentioned, says, that the difference betwixt a certain and an incertain day is only meant for repetition of a sum paid before due, which they call *condictio indebiti*, but by no means to oblige the creditor to receive payment before the time, when he is not willing and foresees an inconvenience to himself by receiving it.

BUT then, on the other hand, immediately when a bill falls due, although the bearer is not obliged to demand payment nor protest until the last day of grace allowed by the custom of the place where he resides, yet he may be obliged to receive payment, because if it be in his option either to do diligence or not, so also the acceptor has the liberty of freeing himself as soon as the time is come that he could have been forced.

IF

IF it should happen that the bearer of a bill of exchange doth not appear upon the day of its falling due, which is frequently the case, especially when the bill is payable to the order of him who gave the value, who perhaps has sent the first for acceptance, while the second is negotiated, and indorsed by several hands, (which practice has been already explained); or if the bearer should refuse to receive the money, when offered. in that case, the acceptor may consign the money, under protest, after which, if there should be any diminution of the species, it would be upon the bearer's risque and peril (*a*). Which practice hath been often known, and especially in *France*, where the value of money has been sometimes pretty precarious: and the way there is commonly for a judge to put the seal of the jurisdiction to which he belongeth upon the bags, and then to deposit them in the hands of the person who consigns. But in such a case, the

(*a*) *Obsignatione totius pecuniae debitae solemniter facta, liberationem contingere manifestum est.*

the person who consigns ought to take particular care to see the bags sufficiently sealed, so that they may not be broken up, because that would occasion the consignment to be declared void and null, and the consigner would be deprived of the benefit he expected from it, which was the case of certain merchants of the city of *Lyons*: and as this story may perhaps be worth rehearsing, in order to put every one upon their guard in the course of business, I shall give it as related by Monsieur *Dupuis* in his history, thus:—

CERTAIN merchants of the city of *Lyons* being indebted to the Marquis *D'Alegre*, they consigned the sum due in the manner above mentioned; and the bags not being sufficiently sealed upon the binding and sowing, some body opened them, and took out the money, which they made use of as they thought proper; and when it came to be called for, they returned it into the bags, as if it had not been meddled with. But the bite was soon discovered,

discovered, by finding in the bags some pieces of silver of a coin *posterior* to the time of making the consignment; so that the persons who had the money deposited in their hands were decerned to pay it, together with the interest, without the least regard had to the consignment.

I COME, in the next place, to inquire what qualification is requisite to intitle a person to demand payment of a bill of exchange.

THIS quality is necessary, *first*, with respect to the bearer, that he may not exact payment without a just and lawful title; and, *next*, with respect to the acceptor, that his discharge may be valid and sufficient.

What qualification is requisite to intitle one to demand payment of a bill.

WITH respect to the bearer, his bare possession of, or having the bill in his custody, is not sufficient to entitle him to exact the payment; but his title must be solid and lawful, without which he

he hath no manner of right to demand it.

THIS quality is more or less extensive, according to the different places where the bills are payable: for the general rule is, that to make a man the lawful bearer of a bill, and consequently to give him a just title to demand the payment, it is sufficient that the bill be made payable to him, either by the text, or by an indorsation of the person to whom it is payable in the text, or by a successive indorsation of several persons, through whose hands it may have come, provided the last indorser hath made it payable to that person who demands the payment, or that there be a transfer made by him to whom the bill is payable, either in the text, or by procuration, or by a formal assignation; and even although these orders or indorsations be not upon the same bill which is accepted, yet they are sufficient, because the first may be accepted, and the second may be indorsed, and *e contra*. Yet still the

the bearer's title is good, and a discharge upon any one of them is valid; because the first and second are not two, but one and the same bill, or, as it were, authentic copies of each other, and made for one and the same purpose.

THE reason why it is necessary that the bearer of a bill have a title conveyed to him, in one of the above-mentioned manners, before he can exact the payment, is this, That the person who paid the value is the first and real proprietor, and he having put another in his place, by making it payable to him, none else can exact the payment without the consent and order of this last, or of some one who hath derived a just right and title from him in the manner above mentioned (a).

IN order to the better understanding of this affair, and that I may omit nothing to make it as clear and distinct as possible,

Z possible,

(a) Quod autem alicui debetur, alius sine voluntate ejus non potest jure exigere.

possible, it may perhaps not be improper to relate, in this place, a difference which happened a long time ago, and seems precisely to hit this question.

ONE *Jacob Vas* of *Hamburgh* (who had also the name of *Simon Martin*) drew a bill of exchange for 3000 livres, dated 30th *October* 1677, upon *Philip Martin* of *Paris*, payable at 4 $\frac{1}{2}$ usance, to the order of *Bernard Guise* merchant in *Hamburgh*, for value received of him. This bill was sent to *Paris* to one *Henry Barchaux*, in order to get it accepted. It was accordingly accepted, and sent back to *Bernard Guise*, to whose order it was payable. This *Guise*, who had paid no value for it, and therefore pretended no claim or title to it, returned it again to *Barchaux*, who had got it accepted: and he now for a second time having the bill in his custody, and pretending to be creditor of one *Manuel Martin's*, who had sent it to him the first time, thought proper (in order to entitle him to demand the payment) to cause indorse it

to

to himself, by an unknown hand, in name of *Bernard Guise*, to whom it appeared to belong; and afterwards pursued *Philip Martin* before the consuls*, in order to have him condemned to pay the bill, by virtue of his acceptance. *Philip Martin*, the acceptor, who had been informed of the whole affair, who owed nothing to the drawer *Jacob Vas*, alias *Simon Martin*, and who perceived that the bill had been drawn on purpose to impose upon him, maintained that the indorsation was counterfeit; that *Bernard Guise* had neither signed it, nor given the value, and did not so much as pretend to have any title to it; and therefore that it belonged to the drawer, and consequently was not valid, because he owed him nothing, and had no provision made for the payment. These reasons, it seems, were not sufficient to have weight with the consuls; and therefore they passed sentence against him upon

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the

* Five honest substantial citizens.

the 23d *March* 1678, which obliged him to appeal.

BARCHAUX, in his defence against the appeal, produced a consent of *Bernard Guise*, to whom the bill was made payable; and besides that, two declarations, one from the drawer, acknowledging that *Manuel Martin* had paid him the value, and another to the same purpose from the said *Manuel Martin*: and, upon these two evidences, he did not so much as deny that he had caused indorse the bill by an unknown hand, but maintained, that he had a just title to cause indorse it, in name of *Bernard Guise*, by any one he pleased; and for this he had the sentiments of some merchants of considerable reputation upon his side. But the greatest and most experienced part of the traders were of a contrary opinion, and maintained, That it was by no means allowable for one man to sign another's name (a):—That that would be

(a) Quid sit falsum quaeritur, et videtur id esse si quis alienum chirographum imitetur.

be a mean to introduce falsity and cheater into commerce, and so render its security very precarious:—That the common practice of merchants was, that a bill of exchange, not indorsed by the person in whose favour it is drawn, could not be paid to any other but to himself; and that if he would not receive the payment, nor pass his order to another by indorsation, because he had not paid the value to the drawer, that in that case the bill became void and of no effect:—That the consent of *Bernard Guise* was not capable to transfer any right or title, seeing by his own acknowledgement he had none himself; but it is absurd to suppose that a man can convey a right to another which he never had himself, neither could it render an order just and true which was false from the beginning (a); and therefore *Barchaux* could receive no title or right by virtue of it:—That the drawer's declaration was false, and contrary to what he had

(a) Ex initio falsi commissi justa possessio non paratur.

had declared in his letter:—That *Manuel Martin's* declaration could not be in the least taken notice of, because that would be admitting him as an evidence in his own cause, which is contrary to all manner of law and justice.

For all these reasons, there was an arrest passed upon the 18th July 1679, revoking the sentence of the consuls, and discharging *Philip Martin* from the payment of the bill. And certainly it was most just, since it was made appear, by undoubted proof, that the property of it was not transferred out of the drawer's person, by his having received the value; and that the acceptor was not any way indebted to him, but only had been brought in through a trick to accept, expecting provision for the payment before it fell due.

But now, notwithstanding of the general rule proposed, That the bearer of a bill of exchange ought to have it made payable to him in one of the above-mentioned

mentioned manners, in order to give him a just title to demand the payment; yet there seems to be one exception from it, viz. when a man to whom a bill is payable hath failed, and his creditors are put in possession of his effects. In that case, if he was the proprietor of the bill, the trustees for his creditors may lawfully exact payment; or, if it was only in trust, the person for whose account it was remitted may discharge it: but then, it is usual, in that case, to interpose the authority of a judge, to prevent all manner of disputes that might happen afterwards.

BESIDES this exception, we may further observe, That there are some particular cities, where the general rule is restricted, such as *Venice, Florence, Nove,* and *Bolsan*, where, by certain regulations, and long practice, which hath now the force of a law, it is discharged to pay bills of exchange by virtue of a simple order or indorsation; but it is necessary, either that the bills be payable directly

directly by the text to the person who is to receive the payment, or that those to whom they are payable send along with the bills a procuration or factory, conceived in certain precise terms, without which the bearer cannot exact the payment, nor cause make a legal protest for non-payment; because, in case of the want of such a procuration, the payment is not refused through any fault, either of the drawer or acceptor, but by a prohibition of the law of that place where the bill is payable, to which the bearer is obliged to submit: and besides, by the regulations of these places, all notaries and officers of justice are discharged to protest any bill for non-payment, unless it be payable to the bearer, either in the text, or by a procuration in the form prescribed.

I have heard it observed indeed by some, that this practice was first introduced at *Venice*, merely by the avarice of the bankers, that they might thereby enhance their commission and charges, which

which is probable enough; but as the long practice is now turned into a law, there is no help for it, and it is absolutely necessary for all who take bills of exchange, to be informed of the laws and customs of those places where they are payable, in order to prevent inconveniencies.

WHAT hath been hitherto said, is only with respect to the just and legal title necessary for demanding payment of a bill. But now we must also add one consideration with respect to the validity of the discharge; and that is, That the person who pays it ought to be assured, that the person to whom he pays is really he to whom it is payable, either by the text, or by an indorsation; and also, that the indorsation be true and not counterfeit: for, if he should pay upon a false order, or to a person who had falsely assumed the name of him mentioned in the indorsation, the payment would not be held as sufficient, but he would be obliged to pay it a second time, to the

Validity
of the discharge.

A a just

just and lawful bearer of the bill; which hath been a long practice among merchants, and confirmed by several sentences of judges.

Now, generally speaking, bills are made payable to persons residing in the same place with those upon whom they are drawn; so that the man who pays, either knows, or hath immediate access to be informed, about him to whom he pays it; in which case he is in no danger. But when a bill of exchange is presented by an unknown person, demanding payment of the contents, it is necessary to oblige him to give surety, or else to get some persons of probity in the place to acknowledge and attest him to be the very person to whom the bill is payable, that so the acceptor may be safe at all hands.

BUT now, as it frequently happens, that bills of exchange are drawn payable to persons who are going themselves to the place where they are to be paid,

paid, either in the way of trade, or perhaps to travel for diversion, &c. and who have no acquaintance in those parts, and consequently cannot get themselves attested to be the just and legal bearers of the bills, I must here observe what is the common practice of merchants in these cases, and is what hath very often happened to myself, both in drawing and paying such bills.

FIRST, the drawer, when he delivers the bill to the person in whose favour it is drawn, at the same time gives him a letter of advice, which he is to deliver when he presents the bill: then the drawer sends by the first ordinary post, &c. an exact copy of the letter he gave along with the bill, and confirms it by a new advice, in which he describes the person in whose favour the bill is drawn as exactly as he can, by his age, complexion, features, clothes, &c. so that, when he presents the bill, the person upon whom it is drawn hath only to compare the two letters, and observe whether

ther the bearer answers to the description sent him by his friend; and, finding all to agree, he thence concludes, that he is safe to pay the bill. And indeed, where such precaution is taken, though it may be possible, yet it is not very probable, a man can be imposed upon: and though I believe there have been very few (if any) instances of it; yet it is still the safest and best way, to take all imaginable care to prevent it. And now that I am upon this subject, it will, I hope, not be thought improper to add one advice, by way of caution to the bearers of such bills, *viz.* That they ought always to take first and second, &c. bills, and send at least one by the ordinary, to some person residing in the place where the bill is to be paid, in order to get it accepted, and prevent all danger or inconvenience that may happen by losing it by the road, or any other such accident: nay, if the journey be long, and any way hazardous, I should not think it amiss to send two by different posts, and carry the third along with myself; that so, if

one

one failed by miscarriage, &c. I might always be sure of another. When we come to the place where the bill is payable, we call for that person to whom the bill was sent to get acceptance, which he cannot refuse to deliver up, upon shewing him that bill which we carry along with ourself: nor would it be to any purpose if he did, because he could make no manner of use of it; for I suppose all along, that it is not indorsed, and consequently no body could demand or receive payment but the just and lawful bearer.

BUT to return to the acceptor of a bill, I shall only add, that when he pays it to a sufficient responsible man, then he runs no manner of risk; because he who receives the payment, and grants the discharge, is obliged to warrant and make good the justness and sufficiency of all the indorsations, by virtue of which he becomes possessor of the bill: but when the bearer happens to be a

stranger,

stranger, in that case the acceptor can never be too cautious.

It was observed, in the beginning of this treatise, that bills were at first made payable to the bearer, or to a particular person named in the bill: but the conveniency and advantage of trading people introduced the custom of adding, immediately after the name, these words, *Or order*; by this means making bills pass from one hand to another, or getting payment of them without going out of one's house; and frequently bills may be retired without being a farthing in advance, by giving over others in their place, or the like.

Indorsing bills.

THIS is called *indorsing* a bill, that is, *in dorsum scribere*; because when the person, to whose order the bill is drawn, either cannot, or will not, receive payment himself, he may write upon the back of it, *Pay the contents to, &c.* or, *For me pay the contents to, &c.* value received, or value of such a person, mentioning from

from whom received, or any other value whatever, the same way as in drawing a bill; which orders must be signed by the indorser, or person who receives the value: and these orders being of the same nature with bills of exchange, they have the same force against the person thus signing or indorsing, as if he was drawer of the bill; and by this means a bill may be transferred through as many different persons hands as can write such orders upon the back of it, which is of vast conveniency and advantage to trade.

WHAT seems next to fall under our consideration, is what is meant by *days of grace*.

IN order to facilitate the business of commerce and exchange, bankers, merchants, and other traders, in diverse places of *Europe*, have introduced a voluntary custom of giving a certain time to those upon whom bills are drawn, that they may have the provision in their hands

Days of grace.

hands before the bills fall due, and consequently may be able to retire them the more punctually, since it is in the power of the bearer of a bill to cause protest it for not payment upon the day that it falls due: but out of civility bankers, merchants, and other traders, have voluntarily agreed to give one another a certain time over and above that mentioned in the bill; which time hath got the name of *days of grace*, or *favour*, because it was first introduced by mere favour of the bearers of bills, and not by any necessity or obligation.

THESE days of grace are of great use in commerce, and favourable to the bearers of bills, because they run no risque of the insolvability of the persons upon whom the bills are drawn, until the days of grace are elapsed. They are also favourable to the drawer, because he hath so much more time to give his advices, and to put provision in the hands of the person upon whom he draws. They are no less favourable to the

the acceptor, because by means of them he hath time to provide money, or to get in payments, for retiring the bills he hath accepted.

ALL bills of exchange ought to be paid immediately after the days of grace, allowed by the custom of the place where they are payable, are elapsed; and the bearers may wait until that time be expired, before they cause protest for not payment, without running any manner of risk; unless in case of a common report of the acceptor failing in his credit, and then the bearer is not safe to wait until the days of grace are elapsed, but ought to cause protest immediately when the bill falls due. Nay further, it is observable, that even during the time of a bill's running, if there happens any accident which may give grounds to suspect the acceptor's credit, and that he will not be able to do due honour to the bill, the bearer may justly and legally protest it for his own security, in order to preserve all the rights of the

B b bill

bill against the acceptor. But this protest is only upon suspicion that the acceptor is insolvent, and is generally made for further security until it fall due, that at any rate the bearer may be secured, as well as the drawer, for whose interest he is to act, being immediately upon the spot, and consequently knows best what reports are going about the acceptor, which the other may not know; and the bearer would be looked upon as negligent, and not careful about his friend's interest, if he did not so: but then he is not to return the bill until the time of its falling due be expired; at which time it must be protested again for not payment, and returned upon the drawer, in order to recover the value, re-exchange, interest and damages.

At *Amsterdam* there are six days of grace after the day of the bill's falling due, including Sundays and holidays; and when an acceptor pays a bill upon a holiday, it is not looked upon to be paid before the time, but it is good and sufficient

sufficient payment: and when the last day of grace happens to fall upon a holiday, if the acceptor should put off payment till then, the bearer must be satisfied, and take it upon that day, unless he takes the risk upon himself: and if the last day of grace should fall upon a Sunday, it must be paid or protested upon the Saturday before: but when a bill is payable in banko, and the bank happens to shut, either to balance their books, or to make new ones, before the six days of grace are expired; in that case, I say, the acceptor may delay payment until the third day after opening of the bank, and then he must write it off; nor needs the bearer protest until that time, seeing he runs no risk, and a protest then is of full force and efficacy.

At *Rotterdam* and *Middleburgh* they have likewise six days of grace, as also at *Antwerp*, according to a statute enacted the 14th *February* 1667, including Sundays and holidays: but bills payable

B b 2

at

at sight must be paid upon their being presented, or twenty four hours after; as also at *Cologne, Nuremburg, &c.* but Sundays and holidays are not included. It is the same at *Venice*; where, in other bills, there are likewise allowed six days of grace.

IN other places, they have more or less days of grace, according to the custom of the places. For in *London* and all *Britain* they have only three days of grace: at *Frankfort*, except during the time of the fairs, they have four days; and bills payable at sight, or two and three days after sight, must be paid, at farthest, twenty four hours after presentation, or after their falling due: at *Leipsic* and *Naumburg* they have, betwixt the two fairs, five days of grace, and at *Augsburg* the same; but bills at sight must be paid, at furthest, twenty four hours after presentation.

IN other places there are more days of grace; as at *Naples* eight, and at *Dantzick*

zickten. They have also ten at *Paris, Rouen, Rochelle, Nants, Bourdeaux* and all *France*, not including the day of the bill's falling due, but only that of the protest. Sundays and holidays. Solemn festivals are also included, agreeably to a declaration of *Lewis* the XIV. 31st May 1686, for regulating the differences occasioned by some former acts concerning commerce.

AT *Hamburg* they have twelve days of grace, including the day the bill falls due; but they cannot protest upon Sundays nor holidays, and therefore it must be done upon Saturday, or the eve of a holiday. They have also twelve days of grace at *Stockholm*; at *Madrid, Cadix, Seville*, and all *Spain*, they have fourteen days of grace; at *Genoa* thirty. At *Leghorn, Milan*, and some other places of *Italy*, there is no regulated or fixed time, but is left to the discretion of the bearer, to allow the acceptor as many days of grace as he thinks proper, or to protest immediately upon falling due, without

without his running any manner of risk.

BEFORE we conclude this head of days of grace, it may perhaps be worth observing, that here in *Scotland*, though there are only three days of grace, as hath been already insinuated, after the expiration of which three days the bearer may protest, and proceed to other diligence; yet, if he pleaseth to favour the acceptor, he may delay protesting for six months, and it will then be as valid against the acceptor, as if it had been made upon the third day of grace. But this is only practised when both drawer and acceptor are persons residing in this country, commonly called inland bills, or when the bill is for the bearer's own account, so that he takes the risk upon himself. But in foreign bills of exchange, the protest must be made the third day of grace, else the bearer runs the whole risk, unless he hath particular orders from his constituent, or the

the person who remitted him the bill, for his security.

BUT as bills bear no interest before the term of payment, this, with the practice above-mentioned, have, I suppose, introduced another practice, now pretty much in use, of making bills payable one day after date; which is done, either when a debtor wants a longer time to pay a sum which is due, or when one wants to borrow money upon his bill, paying interest for it. In both these cases the creditor in the bill draws his interest from the date, although he should delay protesting it for six months; and the debtor may either pay the money sooner, or delay it to the end of the six months, as the parties agree betwixt themselves.

THUS having fully explained the nature and usefulness of bills of exchange, we must not omit to observe, What is meant by certain and incertain exchange: because some countries give an incertain,

Whatcer-
tain and
what in-
certain
at exchange.

at the place where the bill is dated, for a certain to be received at the place where the bill is payable; others again give a certain, at the place where the bill is dated, for an incertain to be received at the place where the bill is payable. To illustrate which, we shall only observe, that, from *Edinburgh*, bills are drawn upon *Rotterdam* commonly in current *Holland's* guilders, which are purchased at *Edinburgh*, by paying at the rate of 21 to 22 a 23 pence for each guilder, payable in *Holland*; which value rises and falls according to the course of exchange: and this is called giving the incertain for the certain to be received. On the contrary, from *Rotterdam* they draw upon *Edinburgh*, by giving a certain number of guilders at an incertain exchange to be received at *Edinburgh*.

AGAIN, from *London* they draw upon *Amsterdam*, by giving a certain number of pounds *Sterling* for an incertain exchange to be received at *Amsterdam*, and from *Amsterdam* they give an incertain exchange for

for a certain number of pounds *Sterling* to be received at *London*.

BUT as all foreign bills drawn upon *Amsterdam*, as well as those drawn at *Amsterdam* upon foreign countries, are paid in bank, I shall here give patterns of both these bills, as they are commonly drawn.

1ma, per exch. L. 100 Sterling. Lond. 17th August 1763.

AT two usance pay this first per exchange to Mr *John Blackmore*, or order, one hundred pounds *Sterling*, at thirty five skillings and six groot *Flemish* per pound *Sterling*, for value received of him; which pass to accompt, as per advice from

DANIEL TRADER.

To Mr *Jan Van Es* merchant *Amsterdam*.

2da, per exch. L. 100 Sterling. Lond. 17th August 1763.

AT two usance pay this second per exchange (first not paid) to Mr *John Blackmore*, or order, one hundred pounds *Sterling*, at thirty five skillings and six groot *Flemish* per pound *Sterling*, for value received of him; which pass to accompt, as per advice from

DANIEL TRADER.

To Mr *Jan Van Es* merchant *Amsterdam*.

Cc

1ma,

1ma, per exch. L. 100 Sterling. Amst. 17th August 1763.

Let two usance pay this first per exchange to Mr Adam Batchelor, or order, one hundred pounds Sterling, at thirty four skillings and ten groot Flemish per pound Sterling, for value received in Banco; which place as per advice from

ANDREW TRAFFICK.

To Mr John Banker merchant in London.

2da, per exch. L. 100 Sterling. Amst. 17th August 1763.

Let two usance pay this second per exchange (first not paid) to Mr Adam Batchelor, or order, one hundred pounds Sterling, at thirty four skillings and ten groot Flemish per pound Sterling, for value received in Banco; which place as per advice from

ANDREW TRAFFICK.

To Mr Andrew Banker merchant in London.

HERE probably it may be of use, and possibly will be expected, that I should give a more particular account of the species of Great Britain, as well as her manner of exchanging, both within the nation, and with other foreign countries with which she has trade.

BILLS are drawn and remitted reciprocally betwixt all the several places of Britain by pounds shillings and pence Sterling, at so much per cent. advance, or discount, sometimes more, sometimes less,

less, according to the demand for money, or bills of exchange, or as the bills are drawn, at long or short sight, since the species of money is the same, and upon the same standard, through the whole kingdom; but, in drawing and remitting from Britain to foreign countries, they give sometimes the certain, and sometimes the uncertain exchange, according to the different places where the bills are payable, as shall be shewn in course.

LONDON, generally speaking, has some course of exchange or other with the most part of foreign countries; whereas France is frequently obliged to make use of the medium of correspondents in one place, to negotiate their bills upon certain other places, to which they have no direct course themselves.

THE real species of Britain is, first, guineas of gold; so called, because the gold they were made of at first was brought from Guinea: which guineas are commonly

monly of intrinsic value worth 20 to 21½ shillings *Sterling*; but upwards of 50 years ago, they passed in the country for 22 to 23½ shillings. Now the price is regulated by the parliament to 21 shillings *Sterling*, and the half guineas, in proportion, to 10½ shillings; and now of late that we have got ½ guineas, they pass current for five shillings and three pence.

THERE was another sort of gold coin known by the name of broad pieces, because they are much broader and thinner than guineas, and are called *Caroluses* and *Jacobuses* from the names of the kings under whose reigns they were coined. They are worth from 23 to 25 and 27 shillings; but are now worn so very rare, that scarce any of them are to be seen, except where a lady or gentleman has perhaps one or two of them for pocket-pieces.

THE silver species are,—crowns, worth five shillings; shillings, worth 12 pence; and

and their respective half pieces: there were also pieces called groats, worth four pence, and their halves; but these are now scarce to be seen.

THE copper species are, halfpence, and their halves called farthings, or ¼th part of a penny.

THERE are some other pieces, which pass sometimes in remote parts of the country; but as they are not conformable to any settled standard, I shall not take up time in mentioning them: only we may observe, that the *Portuguese* gold hath a kind of current course, such as the *Joanneses*, which pass for three pound 12 shillings, and their halves and quarters in proportion; but as these are rather a kind of merchandice, and not current money of *Britain*, they may rise and fall according to the plenty or scarcity of them in the country.

IN the commerce of exchange from *Britain*, they use three sorts of species; two

two of which are imaginary, and one real.

THE imaginary species are pounds and pence; there being no such species of coin current in the country: the pound is worth 20 shillings, or 240 pence; the penny is the 12th part of a shilling; the shilling is a real coin, and worth the 20th part of a pound.

ALL books and accounts in *Britain* are kept by pounds shillings and pence *Sterling*.

As we have occasion to mention so often the word *Sterling* (though it be a little digression from our present purpose) I shall endeavour to satisfy those who may be fond of etymologies, which I take from two learned authors, about the original of that word.

THE first is Monsieur *Richelet*, who says, in his dictionary, that the word *Sterling* comes from the high *Dutch*: It is
(says

(says he) a sort of *English* money, either of gold or silver; and one pound *Sterling* is a little more than $\frac{1}{4}$ of a pound weight.

STERLING (says the *Abbé Furetiere*, in his universal dictionary) was a kind of coin formerly so named from a castle of *North-Britain*, called *Sterling*, from its resemblance to the beak of a bird called by that name in the language of the country: it was a white money, at the standard of eight shillings *per* ounce, upon which the Duke of *Guyenne* was represented, with a sword at his right arm, and a hand of justice at the other, and got the by or nick-name of *Sterling*, from its resembling the beak of the bird of that name.

I HAVE quoted these two authors, only to satisfy those who may be curious about derivations. But this last one seems to be merely whimsical, and shews what strange fancies may enter into an author's head, when he is straitened for something to amuse his readers: for is it to be imagined, that the coin of *South-Britain*

Britain should take its name from a city of *North-Britain*, where the money always went by the name of pounds, &c. *Scots*, and the designation of *Sterling* was only applied to the coin of *England*? It is no less whimsical and ridiculous to alledge, that the castle resembles the beak of the bird,

HOWEVER, now that we have said so much about that word, I shall beg leave to inform my readers, that we learn from the abridgment of the history of *England*, that, about the year 1190, *Richard I.* caused a new coin to be struck, much valued for its purity, and afterwards another kind of common money, which were both called *Sterling*, from the coiners, who were a people settled in the east of *England*, come from *Germany*, called *Osterlings* (that is to say, east-country men); and this, I think, seems to favour the opinion of *Monfieur Richelete* above quoted.

LONDON exchanges upon the following

ing places, by giving a certain for an uncertain and variable exchange, viz. *Holland*, *Brabant*, *Flanders*, *Zeland*, *Hamburg* and *Rochelle*; in remitting to, or drawing upon which places, they give commonly one pound *Sterling* for so many shillings *Flemish*, sometimes more, sometimes less, according to the course, but very rarely under 26 or above 38 shillings per pound *Sterling*.

UPON *Nants* they exchange, by giving at the rate of *L. 10 Sterling* for 120 to 160 livres *Tournois*.

UPON *Dublin*, and all *Ireland*, they exchange, by giving at the rate of *L. 100 Sterling* for *L. 105* to *L. 113*, to be received where the bills are payable.

AGAIN, *London* exchanges with the places after-mentioned, by giving the uncertain for a certain exchange fixed at the places where the bills are payable, viz. upon *France*, by giving so many pence *Sterling*, according to the course of

D d exchange,

exchange, for one crown of three livres or 60 sols *Tournois*; and it used to run generally from 50 to 60 pence *Sterling* per crown; but during the heat of the stock-jobbing in the year 1720, when the *French* money was raised so far above the value, the exchange fell from 20 to 15 pence *Sterling* per crown; and now it is from 30 to 34, or 35 pence per crown of 60 sols *Tournois*.

UPON *Spain*, by giving so many pence *Sterling* for one piastre or piece of eight *R.* which generally runs from 55 to 75 pence *Sterling* per piece of eight.

UPON *Venice*, at the rate of 55 to 75 pence *Sterling* per ducat of 24 groot.

UPON *Milan*, at 55 to 75 pence *Sterling* per ducat of 5 livres 15 sols.

UPON *Rome*, at 55 to 75 pence *Sterling* per crown *d'estampe*.

UPON *Florence*, at 55 to 75 pence *Sterling* per crown of 7½ livres.

UPON

UPON *Genoa*, at 50 to 70 pence *Sterling* per piastre of 5 livres.

UPON *Leghorn*, at 50 to 70 pence *Sterling* per piastre of 6 livres.

UPON *Portugal*, they give from 6 to 7 shillings *Sterling* for 1000 rees.

THEY exchange upon *Berlin* the same way as upon *Hamburg*; upon *Geneva*, as upon *France*.

UPON *Frankfort* and *Nuremburg* the exchange is commonly managed by means of their correspondence at *Amsterdam*, though sometimes they draw and remit from *London* directly.

IN drawing upon or remitting to *Antwerp*, *Lisle*, *Middleburgh* and *Hamburg*, they give and receive fewer skillings and groot than upon *Holland*.

THE prices current of the exchange of *London*, *Amsterdam* and *Antwerp*, general-

ly speaking, regulate the prices of the exchange through all Europe.

THE par from London upon Holland, Zealand, Antwerp and Lisle, is reckoned to be L. 1 Sterling for 444 $\frac{1}{2}$ groot current money.

UPON Hamburg at L. 1 Sterling for 426 $\frac{2}{3}$ groot current.

THE par from London upon France was reckoned from 54 to 56 pence Sterling for the old French crown of 60 sols Tournois; but now, since the reduction of the French money, it is not above 30 pence Sterling per French crown of 60 sols Tournois.

UPON Spain, the par is reckoned 54 pence Sterling for one piastre or 272 maravedoes.

THE par upon Venice is 53 $\frac{1}{2}$ pence Sterling per ducat de banco.

UPON

UPON Portugal, the par is 7 $\frac{1}{4}$ shillings Sterling for 100 rees.

HOLLAND exchanges with France, Spain and Lonaon, by giving an incertain for a certain price; because though the exchange in Holland be incertain, that is, they give sometimes more sometimes fewer groot or skillings, according to the falling or rising of the exchange, yet it is always certain in the places where the bills are payable, because they receive one crown of France, one ducat of Spain, and one pound Sterling, at a variable course of skillings or groot paid in Holland; but bills upon Dantzick are drawn for a certain fixed number of pounds groot of Holland, for an indetermined and variable number of Polish groot to be paid there, or of money of Brandenburg to be paid at Koningzburg, or for a certain number of rix-dollars of Holland at a variable course of rix dollars at the above-mentioned places.

BUT as we had occasion to observe, that bills are generally paid at Amsterdam in the bank, it may perhaps be agreeable,

agreeable, as well as useful, to some who may read this treatise, to give them some small description of that famous bank, and shew how payments are made in it; which take as follows.

Bank of Amsterdam.

IN order the better to understand this subject, we must consider, that most of the species in *Holland* are base money, of a very low standard, the only good silver they have being ducadoons, rix-dollars, $\frac{1}{2}$ and $\frac{1}{4}$ rix-dollars. This being the case, when their trade increased to a very high degree, so that the merchants had very great sums to pay and receive, they found it both inconvenient and chargeable, by reason of the time it employed, as well as the extraordinary expences of servants, porters, with wheelbarrows (a), and even frequently horses with sledges (b), to transport their money from place to place; all which was a vast detriment to their trade, and run away with a great part of their profits.

THE

(a) Cruywaggonn. (b) Sleepen.

THE government, for certain reasons of their own, did not think proper to alter the standard of their coin; but in lieu of that, and to remove the above-mentioned inconveniencies, the magistracy of the city of *Amsterdam*, in the year 1609, proposes to the merchants to take in their money, and secure it in strong vaults below their famous Stadt house, which vaults are shut with iron doors, and guarded by strong guards night and day: and besides all this, they have security on the revenues of the city, which is better than that of several crowned heads.

THE money they take in are only the great species, such as ducadoons, rix-dollars, &c. which are ascertained to the proprietors at a certain rate of 5 per cent. better than the current money which passes from hand to hand; for a ducadon in bank is only called three guilders, whereas in trade, or exchanging it for small money, it passes for three guilders three fivers.

What money taken in.

THE

THE merchants finding the convenien-
cy, as well as the advantage of this pro-
posal, soon brought in vast sums of mo-
ney (to what extent I cannot be positive);
and when their money was laid in, eve-
ry one got credit in the bank books for
his particular sum; and thus, by circu-
lating payment from one to another, they
could pay millions in a moment, by sub-
scribing their names.

THIS advantage, together with the dif-
ference betwixt the bank and current mo-
ney, very soon drew all the considerable
merchants to press in their money upon
the bank; which made at first the bank
money to rise considerably above the cur-
rent, more than the intrinsic difference
of 5 per cent. and this difference is what
they call the *agio*, or exchange be-
twixt the two. But after this bank was
established, the question was, how to
keep up its credit, and make a circulation
of transfers. To render which effectual,
by an act of the burgo-masters of *Am-
sterdam*, by authority of their High
Mightinesses

The *agio*.

Mightinesses the States-general, and ad-
vice of the 36 councillors of that city,
dated the 31st *January* 1609, it is ordain-
ed and appointed, that all bills of ex-
change negotiated at *Amsterdam* for 600
guilders and upwards ought to be paid
in bank, upon the penalty of 25 guil-
ders fine. And indeed it is proper, that,
in those places where banks are establish-
ed, all bills of exchange should be paid
in them, because of the difference be-
twixt bank and current money. However,
the above-mentioned act is not always
observed by bankers, merchants, and o-
ther dealers; and particularly by shop-
keepers, who have their chaps and cor-
respondents in different places of the
province of *Holland*, such as *Dort*, *Haar-
lem*, *Leyden* and the *Hague*; or in *Zeland*,
as *Middleburgh*, *Flessingen*, &c. and in
the neighbouring countries, as *Utrecht*,
W. Friesland, &c. or perhaps in divers fo-
reign countries: so that amongst them
bills are frequently negotiated in cur-
rent money, because their accompts are
kept that way, and frequently it happens
that strangers do not know what bank

E c money

money is, or the difference betwixt it and current money. But if the bank of that city kept accompts with the inhabitants in current as well as in bank money (as is done at (a) Rotterdam), the above act might be observed.

I COME now to shew how payments are made and received in this bank: for it is to be observed, that neither money nor notes are given out, but every merchant who hath an accompt in bank is obliged to have by him printed billets, which they purchase for a small trifle in quires, as we do bills of loading, and are in the low Dutch language, which in English would run thus:

f. Banco. A. Amsterdam 17. &c.
G Entlemen managers of the exchange bank, please pay to the sum of and this shall avail against me.

WHEN any merchant or banker hath a demand made upon him, he goes along

(a) The bank of Rotterdam is upon the same footing with the other, only in this respect that they keep an account in current money with those who chuse it, which is a great conveniency to the inhabitants.

long with the person who is to receive the payment to the bank, and there fills up the blanks in the billet with the person's name to whose credit it is to go, and the sum to be paid; which billet he then signs in presence of the book-keepers, two of whom sit together at bank hours, the one writing in the journal, and the other at his hand in the ledger. The person who signs the billet having delivered it over to these book-keepers, he is immediately debited, and the other person whose name is inserted gets credit for the same sum; by which means their journal and ledger are continually kept up equal; so that, at all bank hours, any one who has an accompt hath access to see how it stands, upon paying a small perquisite to the book-keepers.

Manner of making payments in bank.

IT is necessary to observe, that the person who makes the payment must always be present, and sign the billet at the sight of the book-keepers, to whom he delivers it out of his own hand: but then, there is no necessity for the person in whose favour the transfer is made

to be present; for he may get credit for many thousands in his absence, and may be informed at any time what sums are put to his credit, which again he may immediately write off to others, in the manner above prescribed.

The manner of paying bills in bank.

THE next thing to be considered is, the manner of paying bills of exchange drawn upon *Amsterdam payable in banco*; and that is, when the bill comes to the bearer's hand, he carries or sends it to the person on whom it is drawn for acceptance, which is done in the common form. When it falls due, it is common, out of civility, to acquaint the acceptor, and ask him when he is to write it off in bank (this being their manner of asking payment). The acceptor answers, perhaps, to-morrow, or next day; always observing to keep within the days of grace allowed by the custom of the place. Then the bearer writes upon the back of the bill (commonly in the *Dutch* language) *Place the contents, to my account in bank*, which is their method of discharging

ging bills of this kind: then he signs his name, and delivers the bill to the book-keepers. The acceptor is obliged to go to the bank with his billet, as above described, and calling for the bill, he sees who is the last subscriber on the back of it, and fills up his name, with the sum contained in the bill; and after signing the billet, he delivers it to the book-keepers, who immediately debit him, and deliver him up the bill, upon his paying their perquisite, which is commonly one skilling or six stivers: but this may be, and frequently is saved, when the bearer and acceptor know and can trust one another; because, in that case, they either go to the bank together, where the bearer sees himself get credit, or sometimes he gives up the bill to the acceptor, and calls when he has occasion at the bank, to see if it is writ on his credit, without putting the book-keepers to the trouble of depositing the bill in their hands, and saves their perquisite.

PERHAPS

How to get bank for current, or current for bank money.

PERHAPS it may be objected, that by this method of making all payments in the bank, both merchants and others may frequently run out of current money, for making small payments, and other necessary uses. But this difficulty is easily removed, if we consider, that there are great numbers of cashiers (generally *Jews*) who meet every day, about ten of the clock, upon a large area before the *Stadthouse*, called the *Dam*, where they have their several negotiations in regulating the exchanges to the several trading places of the world: so that if one wants current for bank money, he goes to these *Jews*, who will give him whatever he has occasion for in current money, for his order upon the bank as above, agreeing for the *agio* at the current rate; for it is to be noticed, that although, as was said above, the intrinsic *agio* is 5 per cent, yet it rises and falls according to the greater or less demand for bank money, and I have known it from $3\frac{1}{2}$ at all the degrees even up to 6 per cent. And these *Jews*,
by

by their nice observance of circumstances, which may occasion the *agio* to rise and fall, make great profits of it.

AGAIN, if one has current money by him, but has a demand upon him in bank, where we shall suppose, either that he has no accompt, or hath not credit in bank, to the extent of the demand upon him; he hath nothing to do but go to one of these cashiers with his current money, who will furnish him with as much credit upon the bank as he hath occasion for, agreeing for the *agio* as above, and that he can dispose of again next day as he pleaseth.

WE may here observe, by the way, that though the species of money be the same in current and bank money, yet the books and accompts are kept differently. For all merchants, as well as others, keep their books by guilders, stivers and peningen; sixteen peningen making a stiver, and twenty stivers a guilder. The peningen is an imaginary name, there

How the books are kept in the bank.

there being no such coin, but two of them are called a duyt, and eight duyt make a stiver. But, in the bank, they reckon by pounds groot, or pounds *Flaams*, skillings, and groot. Twelve groot or six stivers make a skilling, and twenty skillings or six guilders make a pound groot or *Flaams*. So wherever a bill is drawn, or payments to be made by skillings and groot *Flaams* or *Flemish*, it is always to be understood as payable in bank; and if by agreement of parties (which sometimes happens) it is paid in current money; the skillings and groot are first reduced to guilders, and then the *agio* at the rate for the time added to that, makes the current money to be paid in place of the bank money payable.

It may possibly be expected, that I should here give some account how the bank makes its profits: but that I do not look upon to be my business at present; it having been done by learned authors; as far as can be known, such as Sir *William*

ham Temple and the authors of the universal dictionary of trade and commerce, &c. And indeed, there are certain secrets concerning that known to none but the managers, who are always the magistrates of the city for the time being, and who, as I am informed, are solemnly sworn to keep the secrets before they are admitted. And as I have confined myself to the practical part, I shall conclude this head with one short caution to my readers, some of whom may possibly be led into a mistake, by reading Sir *William Temple's* history of the *Netherlands*; where he says it is not easy to know what proportion the credit of this bank bears to its real riches; but one thing is certain, says he, "That the tickets or bills here-
 " of make all usual great payments
 " that are made between man and man
 " in the town, and not only in most
 " other places of the *United Provinces*,
 " but in many other trading places of
 " the world, &c."

F f

Now,

Now, as the manner here in *Britain* is to give out bank bills or notes, young readers may perhaps imagine, from the above quotation, that the custom is the same in *Amsterdam*. But there is no such thing; for neither notes nor money are given out there: and what Sir *William* means by the tickets or bills of that bank, are nothing else but these tickets I have above described given in to the bank by the debtor in favour of the creditor. And this much much, I hope, may be sufficient to inform any one of the nature and manner of making payments in that famous bank.

HAVING now treated pretty minutely of the nature and usefulness of exchange, and given full directions for drawing, indorsing, accepting and protesting bills, I shall conclude the whole with offering some directions about those letters, which every one who either draws or remits bills of exchange ought to send to their several correspondents, commonly called *letters of advice*.

THOSE

THOSE who have occasion either to draw or remit bills of exchange, ought to be particularly careful of giving due advice by the first post of what draughts they have made upon them; because (as we said in the direction for drawing of bills) the bills themselves bear, that they are to pay them as *per* advice, that is, agreeably to the advice that shall be given them by the ordinary course of the post: so that, if they neglect to give the due advice, the correspondent cannot be blamed if he refuses to accept for want of that advice mentioned: nay, on the contrary, he would be in the wrong if he did accept, until he had the advice; because, in case of any difference happening betwixt him and the drawer, the letter of advice is his only security for his accepting it, seeing the bill bears, that he is to receive advice, which ought to be at his hands as soon as, or rather before, the bill is presented for acceptance: but if the drawer neglects to send it, he is to refuse acceptance for want of advice, and runs no risque by

Letters of
advice.

F f 2

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so doing; for the drawer hath only himself to blame for his negligence, and, in case the bill be returned with protest, he will be obliged, not only to return the money he received, but also the re-exchange, according to the course as it happens to be at the time, from the place where his correspondent lives to that of his own residence, together with the charges of his protest, and port of letters, &c.

THE letter of advice must mention distinctly all the particular circumstances of his bill; that is, the date, the sum for which it is drawn, the name of the person who paid the value, and of him to whom it is to be paid, and the time when payable, whether at *1, 2, &c.* usance, at any number of days after sight, or upon any particular day mentioned.

WHEN the bill is drawn for account of the person who draws it, or for account of another who hath given orders

to

to draw, and not for account of the person upon whom it is drawn; then there is no occasion to mention the course of exchange at which it is negotiated, it being sufficient that he knows the sum he is to pay in that species of money used in the place where he resides. But if the bill is drawn for account of the person upon whom it is drawn; then the drawer ought to give particular advice of the course of exchange at which it was negotiated, that so the acceptor may know the precise sum the drawer has received for his account in that species of money used in the place where the bill was negotiated, because that is the sum he is accountable to the acceptor for, and not the sum contained in the bill to be paid in the species used in the place where the bill is payable. But it may frequently happen, that bills are drawn for sums of the species used in the place where they are payable, at a certain rate of exchange mentioned in the species used in that place where they are negotiated; and, on the contrary, for certain

certain fums of the money used in the place where they are negotiated, at certain rates of exchange mentioned in the species used in that place where they are payable. For example, bills drawn from *Holland* upon *London* are always drawn for *Sterling* money, at the rate of so many skillings and groot *Flemish*, or bank-money of *Holland*, per pound *Sterling*. Again, bills drawn from *London* on *Holland* are drawn likewise for so many pound *Sterling*, payable in *Holland*, at the rate of so many skillings, &c. *Flemish* or bank-money per pound *Sterling*. In either of these cases, it is necessary to mention in the letter of advice, as well as in the bill itself, the course of exchange, and the bank *agio*. In those places where banks are established, the drawer ought, in his letter of advice, to desire his correspondent to honour the draught, both by accepting when presented, and retiring it when due: and in case it is for a third person's account, and not for account either of the drawer or acceptor, the drawer ought to be very particular

particular in advising for whose account it is, and how the acceptor is to have his reimbursement; because, if any of these circumstances are omitted, it might breed great confusion in business, and perhaps sometimes occasion returning the bill with protest, for want of due advice, the danger of which hath been already explained.

THE drawer of a bill ought not to satisfy himself with advising his correspondent that same post when the bill is drawn, but ought also to repeat the same advice the next post after; both because two securities are better than one, so that there can be no harm in repeating of it; and in case of the first letter miscarrying, the second coming to hand will supply its place, by making the contents of it known to the person upon whom the bill is drawn.

HE who pays the value of the bill to the drawer, and remits it to his correspondent, ought also to be particular in

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in mentioning the contents of the bill, the drawer's name, and that of the person upon whom drawn, with every other circumstance; and must be sure to advise for whose account it is remitted, whether for his own or that of any other; and particular care must be had to keep copies of all such letters, as well as all other letters of business whatever, which ought to contain every particular circumstance mentioned in the original letter, without differing from it in one syllable; to which copies they may have recourse when they please, both for their own satisfaction, and because it may sometimes be necessary to produce them as documents, in case of any difference happening, where they may be brought before a judge.

F I N I S.