

## S E C T. VII.

## Whether Bills require Intimation.

1698. July 13. EWING *against* GEILLS and JOHNSTON.

No 56.  
In a competition betwixt an indorsee and an arrester, the prior indorsation was preferred, because bills require no intimation.

THERE was a competition betwixt John Ewing, as he who had a bill of exchange indorsed to him by Howison; and John Geills and Alexander Johnston, as arresters for the drawer's debt; for whom it was *alleged*, That though their arrestments were posterior, yet they ought to be preferred; because the indorsation being of the nature of an assignation, the same not being intimated, was an incomplete right, and could never compete with them.—*Answered*, 1<sup>mo</sup>, Bills of exchange are not regulated by the common formalities of law; but, for the dispatch of trade and commerce, are not clogged with intimations till they fall due; as is clear from Stair, B. 3. tit. 1. § 12. where the first order is always preferred to arresters or assignees; these rights being regulated *jure gentium*, conform to the custom of merchants. 2<sup>do</sup>, Geills, one of the arresters, is the indorser of the bill, and so can never compete.—*Replied*, Though favour of commerce requires the speedier transmission of bills than other rights; yet this does not dispense with such formalities as open a door to all frauds; which the want of intimation may do; and the drawer of the bill is never fully denuded till it be either accepted or intimated; and, before that, it may be still arrested as his money; yet the Lords preferred Ewing, to whom it was indorsed, before the arresters.

*Fol. Dic. v. 1. p. 96. Fountainhall, v. 2. p. 11.*

1706. July 19. ANDERSON *against* TURNBULL.

No 57.  
A precept to account for fungibles, drawn in favour of a third party, requires intimation.

ARBUTHNOT, merchant in Stonehive, draws a precept on Herriot in Dirleton, in favour of David Anderson, merchant in Montrose, that he may count with him for 190 bolls of meal, and 51 stones of iron; and take his receipt for what he should pay him; and Arbuthnot obliges himself to allow it to Herriot. Anderson pursuing, compearance is made for George Turnbull, writer to the signet; who craved to be preferred, as having arrested this debt in Herriot's hands, as creditor to Arbuthnot, long before any intimation made by Anderson of his precept; which being only of the nature of an assignation, could take no effect till intimated; and so he, by his arrestment, did first affect the subject.—*Alleged* for Anderson, 1<sup>mo</sup>, His order and precept being of the nature of an inland bill of exchange, it needed no intimation, being between merchants, and *in re mercatoria*: And Stair, lib. 3. tit. 1. § 12, says, intimation being only a municipal custom, holds not in orders among merchants; and, therefore, the first order to pay, is preferred to arresters, though neither intimation nor acceptance follow.

And Mr Forbes, on bills, page 166\*, prefers an indorsement to an arrestment; 10th July 1698, Ewing *contra* Geills, (*supra*); all such deeds, for the dispatch of trade, being regulated by the laws of nations, and not by local customs of particular countries.—*Answered*, That bills of exchange, for liquid sums, had that privilege and exemption to be free of intimation; but this was not of that kind; for it neither bore a liquid sum, nor value, but required a previous counting. Likeas, no summar diligence, by horning, could have followed on the registration of this precept, as is appointed by the acts 1681 and 1696, to follow on bills of exchange; nor could a protest be taken for payment, seeing a counting behoved to precede to liquidate the debt; which requires an ordinary action, and not a summar charge of horning; and, therefore, it not being in the case of bills of exchange, it cannot plead the privilege to be free of intimation; else all assignations might claim the same, which might subvert all our securities.—**THE LORDS** found a precept of this nature required intimation, and so preferred the arrester.—Then Anderson objected against Turnbull's arrestment, that it was null, being on the Admiral's precept in an affair about a bill, which is nowise maritime, and so *a non suo iudice*.—*Answered*, The Admiralty being a supreme court, his arrestment extends over all; and there is nothing more ordinary than to pursue for bills of exchange before the Admiral; and to annul such arrestments might endanger and unsecure the lieges. And though once an adjudication was annulled, led on a bond registrate in the Commissary-books, as an incompetent judicatory, and another competing adjudication preferred; yet the Lords thought the consequence of that decision so great, that they afterwards altered the same. **THE LORDS** sustained the arrestment. See JURISDICTION.

*Fol. Dic. v. 1. p. 96. Fountainhall, v. 2. p. 344.*

\* \* \* Forbes reports the same case :

GEORGE TURNBULL, writer to the signet, having, as creditor to Mr Arbuthnot, merchant in Stonehive, by two bills, arrested on a dependence before the Admiral, in the hands of John Heriot, merchant in Dirleton, as debtor to Arbuthnot, and after sentence pursued a furthcoming: Compearance was made for David Anderson, merchant in Montrose; who claimed right to what Heriot was resting to Arbuthnot, by virtue of a precept drawn by Arbuthnot in his favour upon Heriot, ordering him to compt and pay to Mr Anderson, for 190 bolls of meal received from the drawer, and for 51 stone of iron at 58s. per stone, and to take his receipt, &c.

*Alleged* for Mr Turnbull, That he ought to be preferred, because his arrestment was prior to any intimation of Mr Anderson's right.

*Answered* for Mr Anderson, That preference was due to him, for that his precept was prior to the other's arrestment; and needed no intimation, being a complete right and conveyance from the date; as all orders and precepts betwixt merchants in *re mercatoria* are, Stair, lib. 3. tit. 1. § 12. Forbes' Treatise of

No 57.

Bills, p. 166. *2do, Et separatim*, the arrestment is null, as being on a dependence, not maritime, before the Admiral.

*Replied* for Mr Turnbull, Mr Anderfon's precept from Arbuthnot is not such an order and bill as is meant by my Lord Stair and Mr Forbes, in the places cited, and which by our practice requires no intimation; it not being for a liquid sum, but only an order to Heriot to fit and clear accounts anent the price of victual, and other merchant goods, with Anderfon; who, albeit the balance was to be paid to him, could not pretend that the right thereto was formally stated in his person, by virtue of the precept, without completing his right by intimation; otherwise all manner of conveyances among merchants might be pretended as privileged from the necessity of intimation, which would tend to unsecure arrestments, by latent rights. Again, this precept cannot partake of the privileges of bills; because summar diligence by horning could not proceed thereon, in that it requires a previous compting for liquidating the debt; which can only be prosecuted by an ordinary action. *2do*, There is nothing more ordinary than to pursue payment of bills of exchange before the Admiralty, and it was never heard that the Admiral's decret was reduced on that account; and if it were otherwise, many would suffer in their rights and property.

*Duplied* for Mr Anderfon, Though horning were not competent on his precept, that could not exclude him from the other privileges of a merchant writ; for bills of exchange, after six months, are not the subject of summar diligence; and notes of merchants are valid without the ordinary solemnities of common writs; though at no time horning could be raised on them. *2do*, The Admiral's jurisdiction is limited to maritime causes; and a bill of exchange is no more a maritime subject, than a bond granted by one person to another: Nor can there be any single instance given, where the Admiral's incompetency to judge concerning bills of exchange being proponed, was repelled by the Lords of Session.

THE LORDS found Mr Anderfon's precept could not carry a right to the subject without intimation; and preferred Mr Turnbull the arrester, albeit his arrestment proceeded on an Admiral precept. See JURISDICTION.

*Forbes, p. 126.*

1724. February 1.

JAMES FAIRHOLM, Merchant, *against* Bailie JAMES GORDON of Ellon.

BAILIE GORDON having given a letter of credit to my Lord Duffus, upon Mr Fairholm, he, in compliance therewith, advanced the money, and took my Lord's bill upon the Bailie.

In a pursuit for the sum of the bill, at Mr Fairholm's instance, the Bailie *alleged*, That no formal intimation had been timeously made to him of this draught, by which neglect he had lost the fund of his relief.

It was *answered* for Fairholm, That he had made a verbal intimation to the Bailie much about the time the bill fell due, which, by the custom of merchants,

No 58.  
Verbal intimation of a draught found sufficient.