

1737. February 24.

JOHN ADAM, Merchant in Glasgow, against THOMAS DICK, Merchant in Douglas.

THE said Thomas Dick indorsed to John Adam a bill, drawn by Dick upon, and accepted by William Alexander in Dyke, payable at Whitsunday 1735. On the second of June thereafter, Adam protested the bill against both drawer and acceptor, at the drawer's house in Douglas, where it was made payable; and, upon the 8th, he charged Alexander with horning, who having soon thereafter failed, Adam, in December following, brought an action against Dick, for recourse, before the Sheriff of Lanark, where he obtained a decret, which Dick suspended, upon the following reasons:

*1mo*, Because diligence was not done in due time. *2do*, Alexander, the acceptor, offered the charger payment at Glasgow, upon the 24th of May, nine days after the bill became due; therefore no recourse could lie, as it was the charger's fault that he had not received payment.

*Answered* to the *first*: That the not protesting till the 2d of June cannot bar recourse, unless the suspender would allege, That the acceptor had suffered an alteration in his circumstances during that time. To the *second*, The offer of payment at Glasgow was altogether a sham, seeing it was made when the acceptor knew the bill was sent to Douglas to be protested, and so could not be delivered up: however, the charger offered to take the money, and find security to deliver up the bill as soon as it came to hand.

*Replied*: The acceptor having broke soon after the protest, the damage thence arising must fall upon the charger, who not only neglected to negotiate the bill, when it became due, but likewise omitted to notify the dishonour thereof to the suspender, until the commencement of this process. And, with regard to the allegiance, That the charger was not in fault anent the offer of payment, it was *answered*, That there is no evidence the bill was really sent to Douglas upon the 24th of May; but, supposing that to have been the fact, the charger should have got it back *quamprimum*, and presented the same to the acceptor for payment, whereby it would have appeared, whether the offer was simulate or real; but, instead of that, he rested satisfied with the protest, as if the acceptor had been bound to attend in the town of Douglas ay and while a protest was taken.

*Duplied* for the charger: The protesting the bill at the drawer's house was the most formal notification that possibly could be given to him of the dishonour thereof; and, although that was not done until seventeen days after the term of payment, still that omission cannot free the suspender from being liable in recourse, unless the acceptor had become insolvent in the *interim*, conform to the decision, 25th July 1699, Yule against Richardson, Bount. v. 2. p. 64. *voce* SUMMAR DILIGENCE. And, as to the offer of payment, if the same had been made at Douglas, where the bill was payable, possibly the charger, in such a

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A bill was not protested for several days after the term of payment, and the dishonour was not duly notified.

The recourse found to be lost, and the drawer not obliged to show that the acceptor had become insolvent in the *interim*.

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safe, might have been considered as *in mora* for not accepting it; but, as that offer was made in Glasgow, at a time when the bill neither was, nor could be presumed to have been in the charger's hand, no regard ought to be paid thereto.

THE LORDS found no recourse now competent against the drawer, in respect the bill was not duly negotiated; and therefore suspended the letters.

*G. Home, No 54. p. 95.*

1743. July 6.

JAMES RAMSAY of London, Saddler, Charger, *against* WILLIAM HOG, Merchant in Edinburgh, Suspender.

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Found, that a bill must be protested for non-acceptance on the day of payment at farthest, not on or after the last day of grace, otherwise recourse is lost. This decision afterwards departed from.

ON the 6th May 1742, Andrew Simpson drew a bill upon Messrs Skinner and Simpson, merchants in London, payable 40 days after date, to the said William Hog, value of him, which place to account, as *per* advice.

Mr Hog indorsed this bill to James Ramsay, (value of Willoughby Ramsay), and, at the same time, wrote this memorandum at the bottom of the bill: 'In case of need, apply to Mr Roger Hog, for William Hog.'

The bill was not paid when it became due, and, upon the 19th June, the day after the last day of grace, and not sooner, was protested for not payment; and then the possessor went, as directed by the memorandum, to Mr Roger Hog, who, observing that it had not been protested till after the last day of grace, believed he could not warrantably pay the same, and therefore refused payment.

Upon this, James Ramsay brought an action of recourse against Mr William Hog, who suspended on the following grounds: *1mo*, That the bill, though sent to London soon after its date, was not protested for not acceptance, though it was presented for acceptance, and the same refused, the persons drawn on making this answer, That, though they had advice from Andrew Simpson, the drawer, that the bill was drawn on them, yet they had not, at that time, any effects of his in their hands; but, how soon the same should come to hand, they should accept or pay the bill. Upon which answer, it was the charger's duty to have protested for non-acceptance, which he not only omitted to do, but likewise omitted to give notice, by letter, to the suspender, that the bill was dishonoured, so as the suspender might, in due time, look after his own security or relief at home, against Andrew Simpson, the drawer; nay, the charger did not so much as acquaint Roger Hog, who was at his hand.

*2do*, The charger grossly failed in not protesting the bill for not payment until the 19th June, the day after the last day of grace; whereas payment ought to have been demanded on the 15th; especially where acceptance was not sooner insisted upon: It is true, payment could not be exacted until the third day of grace, viz. the 18th June.

Both which reasons of suspension are good, even supposing the defender could not qualify he had any loss or damage by the neglect of such notice: But, in