

N. B. Before either of the above judgments, the Lords had remitted to two merchants in Edinburgh, noted dealers in bills, Coutts and Arbuthnot, to report their opinion upon the practice of merchants, who reported, That where a bill is taken up *supra* protest for honour of the drawer, in order to entitle the payer to recourse, notification ought to be made thereof to the drawer the post immediately after taking up the bill, or the next following post, and that such was the custom of merchants, &c.

At the same time, there was produced by Ouchterlony the opinions of several noted bankers in London, bearing, That by act of Parliament, the person who retires a bill *supra* protest for honour of the drawer, is allowed fourteen days to notify the same to the drawer, in order to entitle to recourse, and that such was the custom of merchants; and further, that the merchant, whose bills are taken up for honour, should always be liable, even where advice is wanted, unless it appear he has lost opportunities of securing himself by the want of advice. But these the Court had no regard to, as they had been mendicated by the pursuer, and not obtained by order as the others were, and as they proceeded upon a misapprehension of the act of Parliament therein referred to, which is that of the 9th and 10th of King William III. c. 17. which manifestly refers to inland bills within the kingdom of England, and allows fourteen days for sending the protest and giving notice to the drawer of the dishonour of the bill; which, as it was a law made in England before the Union, cannot govern bills between Scotland and England, or other foreign bills.

But notwithstanding the above judgments touching the notification necessary to be given, the cause came at last to be determined on a different medium, and to be given for Hunter the defender, who was found to be only a nominal drawer, whose faith was not followed by the porteur of the bills, the person by whom they were payable, nor by Ouchterlony, who accepted *supra* protest for honour.

Fol. Dic. 3. p. 89. Kilkerran, (BILLS OF EXCHANGE.) No 9. p. 73.

1746. December 12. ALEXANDER LITTLEJOHN *against* WALTER ALLAN.

WHERE a bill was not duly negotiated, by the porteur's omitting to present it in due time for acceptance, recourse was refused; notwithstanding the reply, That the drawer suffered no prejudice, the person drawn upon being, to this hour, unquestionably solvent.

That reply is never admitted, but where the drawer has no effects in the hands of the person drawn upon.

Fol. Dic. v. 3. p. 84. Kilkerran, (BILLS OF EXCHANGE.) No 11. p. 76.

No 142.

* * D. Falconer reports the same case :

WALTER ALLAN, hammerman in Stirling, having furnished some iron-work to the town, an order was made by the Council upon their Treasurer, inscribed upon the foot of his account, to pay it, amounting to L.20 : 13s. Scots ; and he, 5th March 1743, drew upon the Treasurer on the same paper, to make the payment to Alexander Littlejohn, merchant in Stirling, ' as above restricted, according to the act of Council above-mentioned.'

Littlejohn being creditor to Allan in this sum, he, 4th April 1743, discharged him of all preceding accounts.

The bill was protested, 15th December 1743, against the Treasurer for non-acceptance ; and Littlejohn obtained a decret of the Magistrates of Stirling against Allan, for the sum, with interest and expence of process ; which being suspended, the Lord Ordinary found, ' That the bill was not duly negotiated, by protesting thereof several months after it was indorsed.'

Pleaded in a reclaiming bill, That the drawer sustained no prejudice, since it could not be pretended that the Treasurer was not solvent.

Answered : The defender is not obliged to enter into this discussion, and any cases wherein the allegiance of *no prejudice* has been sustained, have been where the drawer had no effects in the intended acceptor's hands.

THE LORDS adhered.

A.A. J. Dundas.

Alt. H. Home.

Clerk, Forbes.

D. Falconer, v. I. No 147. p. 185.

1747. July 21.

JOHNSTON against HOGG.

No 143.
The dishonour of a bill must be notified in a manner so distinct, that there can be no room for uncertainty, otherwise recourse will be lost.

IN the action for recourse, at the instance of Claud Johnston against William Hogg, as indorser of a bill drawn by William M'Lean of Inverness, on John M'Lean of London, his son, payable to William Hogg, accepted by John M'Lean, and duly protested for not payment ; and which having been, in the common course of business, sold to Thomas and Adam Fairholms, with a blank indorsation, came to be filled up in the name of Claud Johnston : The defence was, That the dishonour of the bill had not been duly notified.

The pursuer *answered* : That it had been duly notified to the defender, by a letter from John M'Lean himself, acquainting him of his having been obliged to re-draw on him for the payment of it, and by the said draft being sent down to Thomas and Adam Fairholms, factors for Claud Johnston, and presented to him for acceptance.

But, as this letter from John M'Lean did not particularly bear, that the re-draft he had given to Claud Johnston was on account of this bill of John