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day of grace,
though no
damage could
be said to arise
by delaying
the protest.

The bill was protested on Thursday the 28th April 1757 for not payment, and notice sent by that night's post of the dishonour. An action for recourse was afterwards brought against Maxwell.

Pleaded in defence, The bill ought to have been protested on the 27th April, the last of the three days of grace; and therefore was not duly negotiated.

Answered, 1mo, Maxwell cannot object to the negotiation of the bill, without proving, that Butter and Crawford were his debtors at the time the bill was presented, the contrary of which was presumable from the last words of the bill; and the only evidence produced by Maxwell, is an account dated four months before, by which a balance is due to him of L. 100 : 16 : 6.

2do, Maxwell suffered no damage by the delay of the protest; for it is offered to be proved, that Butter and Crawford had stopped payment on Monday the 25th of April; and that no bills protested against them either on the Monday or Tuesday were recovered.

3tio, As Wednesday the 27th, the last day of grace, was not a post-night to Scotland, and advice was given of the dishonour by the Thursday's post, Maxwell was therefore acquainted, that payment had been refused, as soon as if the protest had been taken on Wednesday; and therefore could not pretend, that any damage had been occasioned by the want of due negotiation.

' THE LORDS refused recourse upon this bill, and found expences due.'

N. B. In this case it was admitted, that bills drawn from Scotland upon London, have not the privilege of four days of grace; and that the decision observed by Mr Falconer, 29th January 1751, Cruikshanks against Mitchell, (p. 1578.) is wrong marked, the interlocutor there recited having been finally altered.

Ast. Johnston.

Alt. Macintosh.

Johnston.

Fol. Dic. v. 3. p. 84. Fac. Col. No 123. p. 228.

1759. November 21. WILLIAM ANDREW against ANDREW SYME and Co.

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A bill drawn
at so many
days sight,
need not be
transmitted
immediately
for accept-
ance.
*See Falls a-
gainst Poter-
field, infra.*

ANDREW SYME and Co. merchants in Glasgow, did, 5th May 1755, draw a bill upon John and Robert Dunlops, merchants in Rotterdam, for 600 guilders, payable at 21 days sight, to Thomas Hopkirk or order. William Andrew, ship-master in Crawford's Dyke, to whom this bill was indorsed for value, presented the same for acceptance, 19th June 1755, and it was accepted accordingly. But the Dunlops having become bankrupt before the term of payment, William Andrew the indorsee insisted in a process of recourse against the drawers. They put their defence upon the want of due negotiation, *insisting*, That, by the course of the post the bill might have been presented three or four weeks sooner than was done, in which case it would have been payable, and probably paid, before

the bankruptcy of the acceptors; and, therefore, that as the pursuer had failed in due negotiation, his claim of recourse ought not to be sustained.

It was *alleged* for the pursuer, That when he got this bill indorsed to him by Hopkirk, being about to sail from Clyde to Holland, he resolved to carry the bill along with him to save commission and agent-fees; and that if in this step there was no imprudent or unnecessary delay, there can lie no objection against the following steps of the negotiation, because the bill was presented for acceptance without loss of time after he landed in Holland. These facts premised, he *urged* in point of law, that when a bill is drawn on sight, or so many days after sight, the holder has a discretionary power to present the bill sooner or later, as his exigencies require; that it is not supposable he will lie out of his money longer than is necessary; and that the delay of presenting is favourable to the drawer, who cannot be debited with the money till his bill is presented. In general, it was urged to be a rule in law, that a bill drawn on sight requires not the same rigorous negotiation with a bill payable on a day certain; and that recourse has been sustained, though the bill was presented later than what might have been done; 7th February 1735, Innes *contra* Gordon, No 138. p. 1562.

Recourse accordingly was given.

Fol. Dic. v. 3. p. 86. Select Dec. No 158. p. 218.

* * * The same case is reported in the Faculty Collection :

MESSRS SYME and COMPANY, on the 5th of May 1755, drew a bill on John and Robert Dunlops in Rotterdam, for 600 guilders, payable at 21 days sight, to Thomas Hopkirk, or order. This bill was indorsed by Hopkirk to William Andrew.

Upon Andrew's arrival in Holland, the bill was indorsed by him, and passed through several hands, till it was at last presented and accepted by the Dunlops about the 20th of June.

At the time of making this draught, the Dunlops were indebted to Syme and Company in a greater sum; but the Dunlops' affairs having gone into disorder about the beginning of July 1755, the bill was presented for not payment on the 16th of that month; and Andrew insisted in a process for recourse against Syme and Company, the original drawers.

Objected for the defenders, The bill might and ought to have been presented to the Dunlops for acceptance much sooner than it was; and if the porteur delayed to send the bill by post, or chose to wait so long that the acceptors failed in the *interim* before payment could be recovered, the loss must fall upon the porteur, and not on the drawer.

Answered for the pursuer, That he got this bill as he was going to sail for Holland, and resolved to carry it with him for saving commission and agent fee. As soon as he arrived in Holland, he sent it to Rotterdam, where it was presented without any great delay. Where bills are drawn on sight, the porteurs have a discretionary power to fix the period when they shall become payable, sooner or

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later, as their exigencies shall require, unless they are guilty of a *lata culpa*. The delay of presenting is rather a favour to the drawer, as till that time it cannot be put to the drawer's debit. Accordingly, it has been found, that bills drawn on sight did not require the same rigorous negotiation with bills payable on a day certain, 7th February 1735, Innes *contra* Gordon, No 138. p. 1562.

Replied, The defenders had no dealings with the pursuer, nor any reason to doubt that the bill was to be transmitted in course of post, otherwise they would have chosen a more certain way of drawing their money from Holland. The case must be determined, therefore, on the general rules of law, drawn from the nature of the contract Mandati, l. 13. C. Mandati. There is no other difference between bills drawn on so many days sight and those at a fixed day, than what arises from the nature of the thing, which, as to the former, must occasion a little uncertainty even when sent by post. But still it is incumbent on the porteur to transmit the bill with all convenient speed, that the mandate may receive its final completion. When the porteur studies his own conveniency, or is uncertain of his arrival, he takes letters of credit, and not bills on sight. The reason why the drawer supercedes payment for some days, after presenting, is for the conveniency of his correspondent. It is contrary to the principles of such a contract, to suppose any favour to the drawer in delaying the negotiation of this bill, which implies a reciprocal obligation on the drawer, to warrant the solvency of the person on whom it is drawn, and upon the porteur to use all reasonable diligence; Bankton, v. 1. p. 359. § 7.; Erskine, b. 3. t. 2. § 32. In the case of Innes *contra* Gordon, the difference of time was only *four days*, had the bills been sent by post; and the case was nevertheless so doubtful, that the parties agreed it, without waiting a second interlocutor.

'THE LORDS repelled the defence, That the bill was not duly presented for acceptance.'

Reporter, *Bankton*.Act. *Lockhart*.Alt. *Rae, Ferguson*.Clerk, *Home*.*Rae*.*Fac. Col. No 199. p. 355.*

No 153.

Recourse
sustained
upon a promissory note,
where the
dishonour
was duly notified,
although the
note itself
and protest
were not immediately
returned.

1760. December 18. COUTTS and COMPANY *against* NISBET.

DAVID LEITCH, upon the 27th of April 1758, granted a promissory-note, dated at Glasgow, in the following terms: 'Sixty days after date, I promise to pay to the order of Mr David Nisbet, L. 55 Sterling, at the house of Malcolm Hamilton, and Company, merchants in London, for value received.'

Nisbet indorsed this note to Coutts and Company; they indorsed it to Moses, ironmonger of Birmingham; and he to Messrs Parkingsons, merchants in London.

When the note became due, it was presented for payment at London; and, upon refusal, was duly protested against David Leitch, and all others concerned.