

# APPENDIX.

## PART I.

### BILL OF EXCHANGE.

1769. December 19. GEORGE GRANT *against* DONALD CRUIKSHANKS.

Low being indebted to Grant, procured the acceptance of Lieutenant Grant, who again was Low's debtor, to a bill for part of the sum he was due to Grant; but instead of signing the bill himself as drawer, and then indorsing it to Grant, Low delivered the document the day after he had procured the acceptance to Grant, who either then, or some time after, adhibited his name as drawer. Cruikshanks, a creditor of Low's, having arrested in the hands of Lieutenant Grant, a multiplepointing was raised, and a competition ensued between Cruikshanks the arresting creditor and Grant the holder of the bill. The Lord Ordinary found, "That as this bill was accepted as payable to Low, the intended drawer, Low's giving that bill to George Grant his brother-in-law, that he might sign as drawer, was not a habile method of transmitting the contents to George, and therefore prefers Donald Cruikshanks on his arrestment." And to this interlocutor, upon advising a petition and answers, the Court adhered.

No. 1.  
Inhabile  
transmission  
of a bill.

Lord Ordinary, *Auchinleck*.  
Clerk, *Pringle*.

For Grant, *Wight*.  
For Cruikshanks, *Maslaurin*.

R. H.

*Fac. Coll. No. 10. p. 25.*

1770. March 10.

MESSRS. MANSFIELD, HUNTER, & Co. Merchants in Edinburgh, *against*  
DONALD M'ILMUN, Merchant in Glasgow.

UPON the 15th November 1768, M'ilmun accepted a bill for £788. to Ebenezer Macculloch & Co. payable 14 months after date. This bill was in-

No. 2.  
Privilege of  
an onerous  
indorsee.

No. 2. dorsed by Macculloch & Co. to Anderson & Davidson of London, who again indorsed it to Mansfield & Hunter; by whom it was discounted, and the full value paid to the prior indorsees.

Upon the 18th January 1770, when the bill became due, it was protested against M'Ilmun the acceptor for not payment, and against the drawers and indorsers for recourse; upon which M'Ilmun presented a bill of suspension; wherein he stated, That he was under double distress, in so far as Macculloch & Co. the drawers, having become bankrupt, a multitude of arrestments had been used in his hands by their creditors; and in order that he might pay with safety, he had executed a summons of multiplepoinding; That although, where a bill was indorsed for ready money, the indorsee would be preferred to the arresters; yet as it might be alleged in this case, that these indorsations were granted by the bankrupts in security of former debts, within 60 days of bankruptcy, which would be sufficient ground for setting them aside; and as the arresters might further say, and be able to prove, that the indorsations were intended in whole or in part for behoof of the drawers, the suspender was not in safety to pay till the arresters had an opportunity of inquiring into these facts.

In their answer, the chargers set forth, That the bill had been indorsed to them for immediate value; and that they could not therefore be affected by any arrestments that had been used by the creditors of the drawers. All that could be done was to ascertain the onerosity and fairness of the indorsations by their oath; and as they were willing to depone that they had paid value for the bill, and that it was not indorsed in security of a former debt, nor stood in their persons in trust for behoof of the original drawer, the suspension should be refused.

The Lord Ordinary having passed the bill, the question was brought before the Court, and the interlocutor adhered to. The chargers reclaimed; and the petition having been answered, the point, as one of very considerable importance, underwent the most deliberate consideration.

The circumstance which chiefly weighed with their Lordships, to induce them to pass the bill, was the bankruptcy; and as the arresters might thereby have an interest to object to the payment of this bill, and to cut it down altogether, it was contrary to principle to decide upon their right when they were not in the field. If they were in the field, they might perhaps be able to produce evidence in writing that the bill was a trust, and that they would not make a reference to the charger's oath; both of which pleas, unless the bill was passed, they would be deprived of. Though the interest of commerce was no doubt to be regarded, it should be done *sub modo*, not when it struck against established rules of law; but if the charger's argument was gone into, it would destroy the diligence of arrestment altogether.

The judges for refusing the bill rested their opinion upon the bad effects the contrary mode of procedure would have upon the interests of commerce; the

infringement that would thereby be made upon the nature and privileges of bills, without which trade could not be carried on; and the embarrassment and discouragement that would be given to the discounting of bills, a measure equally expedient and necessary for these important purposes.

One of the Judges suggested the following expedient: When the sum in a bill is arrested, that the suspension should be intimated to all concerned; and within a limited time thereafter, the Lord Ordinary on the Bills should examine the holders upon oath on all pertinent interrogatories; and if from them it appeared that the bill had been indorsed for money instantly paid, the suspension should be refused; if not, that it should be passed.

The Court was almost equally divided; but it was carried to *alter* the former interlocutor; so that the bill of suspension was refused.

Lord Ordinary, *Hailes*.  
Clerk, *Tait*.

For Mansfield & Co. *Macqueen*.  
For M'Ilmuir, *Maclaurin*.

\* \* Upon the 11th of December 1770, the same point occurred in a question betwixt Mansfield, Hunter, and Co. and William Douglas; when the Lords were unanimously of opinion that the former decision should be adhered to. No special interlocutor, however, to that import was pronounced. The question was remitted *simpliciter* to the Ordinary to do as he should see cause; it being understood that his Lordship was to take the oath of the charger as to the onerosity of the indorsation; and if that was properly instructed, the bill of suspension was to be refused.

For Mansfield & Hunter, *Macqueen*.

For Douglas, *Maclaurin*.

Clerk, *Ross*.

R. H.

*Fac. Coll. No. 31. p. 85.*

1777. February 27.

JOHN COOPER *against* WILLIAM CLARK, and ROBERT M'LINTOCH *against* JAMES and JOHN COOPERS and JOHN ARTHUR.

JOHN COOPER, in Millhill, applied to William Clark, baker in Renfrew, for the loan of £100. Sterling. Clark could not advance the money, but proposed to indorse a bill for that amount due to him by Wann and Watson of Portglasgow. To this Cooper at length agreed, but does not appear to have received the bill until the term of payment was past. Upon the 4th of January 1774, Cooper received from Clark Wann and Watson's bill of £100. due upon the 19th December 1773, and of the same date he granted his own bill conjointly with his father James Cooper, and John Arthur at Boghall, for £102. 10s. thus including the interest for six months, at which time their bill was payable. Wann and Watson could not pay the amount of their bill, which was therefore protested against them for not payment, and against Clark for recourse. Dili-

No. 3.

Whether when a bill is indorsed after the term of payment, the usual recourse can be obtained?