

SECT. XI.

Consequences, where a Person Subscribes a Bill for behoof of another.

1782. July 5. THOMAS CONNELL *against* HUGH M'LELLAND.

M'LELLAND, in the line of his profession as a mercantile factor, having purchased from Connel at Glasgow, upon the commission of John Learmonth at Leith, a quantity of mahogany, he gave to Connel the following draught on Learmonth :
 ' Three months after date, pay to Mr Connel, or order, at the house of Sir William Forbes, James Hunter, & Company, bankers, Edinburgh, L. 260 : 13 : 7 Sterling, value received. (Signed) HUGH M'LELLAND : And addressed, *To Mr John Learmonth, merchant, Leith.*'

Mr Learmonth accepted this bill ; but, before the time of payment, having failed in his credit, Connel used diligence against M'Lelland the drawer ; who, in a process of suspension,

Pleaded : In this transaction M'Lelland has no proper concern ; he acted merely *factorio nomine* for Learmonth, by whom was received that value for which the bill in question was granted, to whose sole credit the charger trusted, and upon whom only, according to the *res gesta*, and the sense of all parties, an obligation for payment of it could lie. The bill is therefore to be understood and interpreted agreeably to these circumstances, known and transacted on by the charger himself. *Bona fides*, it is true, or ignorance of the *res vere gesta*, might have entitled an indorsee of Connel to claim on this bill. But Connel himself, the original party, can plead no such *bona fides*, no such ignorance, no deception against which he is to be protected. He is therefore equally bound by the undoubted or confessed terms of his own covenant, whether these do or do not appear on the face of the bill. In short, this bill in his hands is not to be raised, by special privileges, above exceptions, founded in the very transaction of which itself is in part a voucher.

Answered : That M'Lelland meant to interpose his credit for Learmonth, is proved *presumptione juris et de jure*, by his becoming drawer of the bill. A contrary idea would render narrow the broad basis of bills, so necessary for the aid and the support of commerce.

The Court were much moved by this last consideration ; and thus had little difficulty in adhering to the interlocutor of the Lord Ordinary, by which it was found, ' That though it appeared that M'Lelland purchased the mahogany not for himself, but on account of Learmonth ; and though it be true, that a factor purchasing goods in the name of another, is not himself liable for the value of them ; yet, as in this case M'Lelland thought proper to give his own security to the seller,

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Found, that a person drawing a bill in his own name, for behoof of another, without mentioning his character of factor, is presumed to have interposed his credit for his constituent, and must be personally liable.

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by signing a bill as drawer, instead of letting the feller draw a bill himself upon the buyer, he thereby became liable for the price.'

Lord Ordinary, *Monbeddo.* Act. *Sir J. Ramsay.* Alt. *Mat. Ross.* Clerk, *Robertson.*
Stewart. Fol. *Dic. v. 3. p. 78.* Fac. *Col. No 50. p. 79.*

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A factor in Scotland, employed to sell goods belonging to English merchants, was accustomed to lodge the price in a private banking-house, on an account in his own name, and to take from them, bills drawn on their correspondent in London, payable to himself, which he indorsed, and transmitted to his employers; against whom he charged two and a half *per cent.* commission. Upon the bankruptcy of the drawers and acceptors, he was found liable for such bills as had not been paid by them.

1795. December 1.

RICHARD BAINES, against THOMAS TURNBULL.

THOMAS TURNBULL was extensively employed by English merchants, in circulating their patterns in different parts of Scotland, selling their goods, and receiving the price of them. It was his custom to lodge the money and bills, received from the purchasers, (whose solvency, it was admitted, he was not bound to guarantee), with Bertram, Gardner, and Company, bankers in Edinburgh, upon an account kept in his own name, and, from time to time, to receive from them bills on Baillie, Pocock, and Company, their correspondents, and, as it has since appeared, their partners in London, payable to himself; which he indorsed, and transmitted to his employers; against whom he charged two and a half *per cent.* commission. He had acted for Richard Baines, merchant at Preston, on these terms, for several years. When Bertram, Gardner, and Company, and Baillie, Pocock, and Company, became bankrupt, Baines held two bills, drawn by the former, and accepted by the latter, which had been sent to him by Turnbull in the usual way, but which had not then become due.

After some correspondence on the subject, Baines charged Turnbull for payment of them; upon which he brought a suspension.

The charger founded on the correspondence between him and the suspender, both before and after the bankruptcy of the drawers and acceptors, as shewing it to be the understanding of both parties, that the suspender's credit was pledged for payment of the bills. Turnbull, on the other hand, contended, that no such inference could be deduced from it; and further stated, that, of his numerous employers, who held bills in the same situation, Baines was the only person who had made a similar demand against him.

The charger mentioned the profit made by Turnbull on his cash account with Bertram, Gardner, and Company, as a strong circumstance against the suspender. The latter, however, denied that he received any interest, or made any profit, upon the money lodged with them. The Court directed the trustee on the estate of the bankrupts, to ascertain, from their books, how the matter stood. He accordingly gave in a report, from which it appeared, that the books did not throw much light on the matter; but it seemed to be understood, that interest was allowed in certain circumstances.

The charger further

Pleaded: The suspender was debtor to him for the money received from the purchasers of the goods; and the obligation thence arising could only be discharged by the charger actually receiving payment. If the suspender had not