

Answered: If the holder of a bill of exchange has made regular intimation of the dishonour, no reason can be given, why his receipt of a partial payment, which is highly beneficial to those liable in recourse, by diminishing the extent of that obligation, should forfeit his claim against them. Accordingly, this defence, which rests entirely on the authority of Lord Raymond, unsupported by any precedent, is contradicted by the decision, *Brown contra Hume*, 14th November 1705. No 126. p. 1546.

No 168.

No precise judgment was given on the merits of this defence, though some of the Judges expressed their opinion that it was ill founded; and as a decision sustaining it would at once have superseeded any further proceeding, the interlocutor of the Court, allowing a proof of the circumstances alleged by the pursuers, and determining on the import of it, may be considered as an indirect rejection.

Upon advising the proof adduced by the pursuers, which did not seem to support their averments, the LORDS 'altered the Lord Ordinary's interlocutor, and found, That no recourse lay against the defender, as indorser of the bill in question.'

Lord Ordinary, *Ellick*. Ag. *Elphinston*. Alt. *Ilay Campbell*. Clerk, *Orme*.
Craigie. Fol. Dic. v. 3. p. 89. Fac. Col. No 73. p. 112.

* * This interlocutor was reversed, in the House of Lords, by the judgment mentioned above.

1784. February 20.

STIRLING BANKING COMPANY against DUNCANSON'S REPRESENTATIVES.

DUNCANSON became indorser of a bill, without value, at the request of James Guild, to enable him the more readily to get it discounted. It was dated 20th December 1782, payable three months after date, drawn by Robert Campbell, and accepted by Guild for L. 90.

The Stirling Banking Company, who had discounted it, protested it in due time, and the protest was registered. Letters of horning were raised, and put into the hands of a messenger, who returned an execution of charge against Duncanfon, dated 3d April 1783, the 12th day after the last day of grace.

Duncanfon was in the bank office on 8th May, or about six weeks after the bill had become due, when the diligence against him was mentioned. He brought a suspension on the ground, that no charge had been given to him, nor any information of the dishonour of the bill.

THE LORD ORDINARY 'in respect the suspender had failed to propone imprecation of the execution, repelled the reasons of suspension, and found the letters orderly proceeded.'

No 169.

An informal execution of a horning was not sustained as evidence of intimation of the dishonour of a bill.

No 169.

Improbation was now proponed ; and the questions at issue came to be, Whether the execution was regular and valid ; and, although irregular, whether, notwithstanding, it did not afford sufficient evidence of intimation of the dishonour, within fourteen days from the date of the protest.

The execution of the horning turned out to be informal. The name of one of the witnesses was forged ; and the evidence of the witnesses who were examined, did not ascertain that any charge had been actually given.

THE COURT held, that even verbal intimation of the dishonour of a bill, if it were distinctly ascertained that such had been given, would have been sufficient ; although private knowledge, without information from the holder, would not ; but that here there was no evidence of intimation. The letters were suspended, and expences found due.

Ordinary, *Lord Eskgrove.* For Chargers, *R. Hodgson Coy.* For Suspenders, *D. Cathcart.*
Clerk, *Menzies.*

See Session Papers in Signet Hall.

1786. June 29.

No 170.

When the last day of grace happens to be Sunday, the bill must be protested on the day preceding. A bill protested on the day following, was found not duly negotiated.

SMITH and PAYNE *against* LAING, ARTHUR, and COMPANY.

A BILL drawn and accepted in London, was indorsed to Laing, Arthur, and Company, in Scotland. It was afterwards indorsed to Smith and Payne of London. The last of the days of grace happened to fall on a Sunday, and the bill was not protested till the day following.

Smith and Payne, the last indorsees, having for their recourse used diligence against Laing and Company, prior ones, the latter brought a process of suspension, on this ground, That recourse was barred by undue negotiation, as the protest ought to have been taken on the second, and not delayed till after the last day of grace was expired. And, in support of this objection, they

Pleaded, When the third of the days of grace falls on a Sunday, the rule is, That the bill should be protested on the preceding day ; Ramsay *contra* Hogg, No 140. p. 1564. ; Cruickshanks *contra* Mitchell, No 145. p. 1576. This rule is general with regard to all bills, whether *inland* or *foreign* ; 9th January 1731, M'Kenzie *contra* Urquhart, No 137. p. 1561. ; Bankton, vol. 1. p. 364. § 23.

If the law of England, as that of the *locus contractus*, were to govern this question, the same rule would still be admitted ; this bill, in the construction of that law, being, with respect to the present parties, a foreign one. For the indorsation to persons in this country would be deemed equivalent to a new, and consequently a foreign bill. ' When a bill of Exchange, (to use the words of the Earl of Mansfield) is indorsed by the person to whom it was made payable, as between the indorser and indorsee, it is a new bill of exchange, and the indorser stands in the place of the drawer.' Burrow's Reports, vol. 2. p. 674.