

1791. *March 1.*

The TRUSTEE for the CREDITORS of JAMES STEIN, *against* SIR WILLIAM FORBES,
JAMES HUNTER, and Company.

No 204.

Indorsations
of bills of
exchange by
a merchant to
his banker,
in the ordina-
ry course of
business,
not affected
by the act
1696.

JAMES STEIN, who carried on a very extensive trade as a distiller at Kilbagie, in the county of Clackmannan, had many dealings with Sir William Forbes, James Hunter, and Company, bankers in Edinburgh.

Sometimes the bills discounted by Stein, being considered as cash, were immediately carried to his credit in his account current; but more frequently no credit was given for the contents of the bills indorsed to or deposited with the company, till they were paid by those who were immediately liable for them.

Stein, on the 28th February 1788, was rendered bankrupt in virtue of the statute of 1696, c. 5. On 29th December 1787, being the sixty-first day before the bankruptcy, the sums due by him to Sir William Forbes and Company, as appearing from the debit side of his account current, amounted to L. 9868 : 16 : 5; but the Company held in their hands bills and other securities deposited by Stein to a much greater amount.

During the sixty days, however, which immediately preceded the public bankruptcy, Sir William Forbes and Company having no suspicion of Stein's failure, advanced large sums for him. At the date of the bankruptcy, the balance against Stein, on the face of his account current, was L. 34,636 : 11 : 10. Besides, in consequence of bills due by him, which had been discounted by other people at the same banking-house, he was a debtor to the Company in a farther sum of L. 15,000. But during the same period, he had indorsed and deposited with the Company bills, and other negotiable securities, to the amount of L. 18,458 : 2 : 4; so that the advances by the Company during the sixty days before the bankruptcy, exceeded the deposits by L. 6309 : 13 : 1.

In the ranking of the creditors, a claim having been entered by Sir William Forbes and Company for the whole sums due by Stein, amounting to L. 49,494 : 4d. it was *objected* by the trustee for his creditors, That the indorsations and deposits of bills for L. 18,458 : 2 : 4 being within sixty days of the public bankruptcy, fell under the enactment of 1696, c. 5.

Informations having been ordered on this point, the trustee

Pleaded: However important to a commercial country the free circulation of bills of exchange may be, it has not been thought proper to introduce, with regard to them, any exception from the general rule laid down in the enactment of 1696, c. 5. by which it is provided, ' That all and whatsoever voluntary conveyances and assignments, or other deeds which shall be made, directly or indirectly, by a bankrupt, either at or after his becoming a bankrupt, or in the space of sixty days before, in favour of his creditors, either for his satisfaction or security, in preference to other creditors, should be null and void.'

The indorsations here cannot be considered as *payments* in cash, no credit having been given for them till the proceeds were recovered by the indorsees. They

cannot be considered as *securities* for *money instantly advanced*, the several indorsements having no relation to the sums disbursed for the indorser's behoof. Neither can it be said, that they were *pledged* for future advances; in which case it might have been argued, that the bankrupt having been at no time indebted to the indorsee, the statute was not applicable. It appears that at all times the Company were in advance for the bankrupt.

And it is of no importance, that during the sixty days prior to the bankruptcy, the advances by the Company exceeded the deposits. As neither the bankrupt nor the Company were under any obligation to continue their dealings, every different transaction must be considered apart from the rest. And thus the money arising from the indorsed bills having been necessarily employed to discharge debts antecedently due, the operation of the statute seems inevitable.

Answered: The indorsation of a bill of exchange, by a bankrupt, in security or satisfaction of a prior debt, unquestionably falls under the enactment of 1696. Still however it will not follow, that transactions such as the present, and which are essentially necessary for the carrying on of an extensive trade, can be affected by it.

The nature of the intercourse between the parties evidently was, that Stein should procure good bills, and that for these bills Sir William Forbes and Company should furnish cash, to be paid to him as the exigencies of his trade required. The indorsements, therefore, were not made in security of a prior debt; they must be considered as granted for value, the company, by receiving the indorsements, becoming bound to hold in readiness the proceeds for his accommodation.

If, indeed, the indorsements during the sixty days prior to the bankruptcy had exceeded the advances, it might have been maintained, that being indirectly the means of preferring the indorsee to the other creditors, they ought to be disallowed. But as the very reverse of this happened, it cannot with any reason be pretended, that while the indorsee are precluded from recalling the payments made by them, they should be prevented from availing themselves of those deposits, without which the advances would not have been made.

The Court were unanimously of opinion, that the case here occurring did not fall under the enactment.

After advising informations,

THE LORDS found, That the act 1696 does not apply to the present question, and repelled the objections to the claim of Sir William Forbes and Company.
See BILL of EXCHANGE.

Reporter, Lord Justice Clerk. A& Lord Advocate. Alt. Honyman. Clerk, Home.
Craigie. Fol. Dic. v. 3. p. 55. Fac. Col. No 169. p. 343.