

No 173.

The judgment of the Court, however, proceeded on this ground, that in a question between two indorsers, it was sufficient for authorising a claim of recourse, that in intimating the dishonour no improper negligence could be alleged.

After advising the reclaiming petition and answers, the LORDS altered the interlocutor of the Lord Ordinary, and 'found the letters orderly proceeded.'

Lord Ordinary, *Justice-Clerk.* A&S. *Solicitor-General.* Alt. *Wight.* Clerk, *Colquhoun.*  
*Craigie.* *Fol. Dic. v. 3. p. 86.* *Fac. Col. No. 132. p. 259.*

1791.

ORR *against* TURNBULL.

No 174.

The indorser of an accommodation bill, found entitled to plead the want of due negotiation, in defence against payment.

THOMAS TURNBULL was drawer of a bill for L. 81, accepted by Alexander Brown and James Turnbull. It was indorsed by the drawer to John Laurie; by Laurie to *Robert* Turnbull; by him to Alexander Orr. Although *Robert* Turnbull was the last indorser, it appeared that Orr, who discounted it, gave the cash to *Thomas* Turnbull the drawer, in *Robert's* presence.

The bill fell due on 6th June 1788, and was regularly protested. It was not till 1st April 1789, that horning was executed against *Robert* Turnbull.

Orr having died, his nephew, his general disponee, brought an action against the drawer and indorsers in June 1790. All the parties except *Robert* Turnbull had by this time become bankrupt. He stated in defence, that recourse against him was lost, he having received no intimation of the dishonour in due time.

There was no evidence produced of intimation previous to the charge of horning.

*Pleaded*, in a reclaiming petition: This bill was not entitled to the privileges of bills originating in the course of trade. In these the drawer has effects in the hands of the acceptor; and recourse is denied, if negotiation be neglected; because the drawer cannot otherwise take the steps which may be requisite for securing his property; *Erskine*, b. 3. tit. 2. § 24.; *M'Kenzie* against *Urquhart*, No 137. p. 1561.; *M'Adam* against *M'William*, No 171. p. 1631.

Every new indorsation is in fact a new bill, A. against B. No 99. p. 1510. The defender, therefore, in the knowledge of the nature of the transaction, and a party in it, is in the same situation with the drawer, and is no more entitled to plead want of intimation than he is.

Accommodation bills are in themselves improper, and entitled to no favour.

*Pleaded* for the defender: Although it were admitted, that when the acceptor has no effects, the drawer cannot plead want of notification; the defender's plea is not injured; for, by the *indorsation*, he acquired a right to relief from the drawer and previous indorsers; of consequence, by his *jus crediti* he was entitled to require that the rules of negotiation should be observed.

There is an obvious distinction between the drawer and indorsers of an accommodation bill: The former receiving the money, has no right to relief from any one; but if an indorser shall pay, he has right to operate relief against both the drawer and previous indorsers. This interest is the criterion by which to judge whether strict negotiation is necessary or not.

Some of the Judges doubted whether a bill indorsed, in order only to give it credit, that it might be discounted by the drawer, and which did not at all pass *in commercio* from indorser to indorser, was entitled to the privileges of negotiation. Such indorsers, it was argued, were never cautioners. Some thought accommodation bills proceeded *e turpi causa*. Others were of opinion, there was no turpitude in such bills. Solvent parties, it was said, might fairly raise money in this way; and being able to repay it, they did no wrong.

THE COURT refused the petition, and affolized the indorser.

Ordinary, Lord Henderland. Aft. R. H. Cay. Alt. R. Corbet. Clerk, Mitchellson.

See Session Papers in Signet Hall.

1791.

IRVINE against

An action of recourse was brought against the indorser of a bill. No regular intimation of the dishonour had been given; yet, from private knowledge, the indorser could not be ignorant of the dishonour. THE LORD ORDINARY found him liable; which the Court confirmed, and found expences due.

*Observed on the Bench:* When an indorser hears nothing of a bill for some time after the term of payment, he is entitled to presume it is paid: hence, in general, without intimation, an indorser cannot be made liable; but, in the present case, the parties saw each other every day, and the whole circumstances come to be equivalent to regular intimation. The indorser knew, from circumstances, that the bill was dishonoured. In particular, he was present when the acceptor made a partial payment.

The defender was on the poors roll; but this was considered as no reason for preventing a decree against him for expences. See Poor. 1

(No. Printed Papers.)

1792. January 21.

CREDITORS OF MACALPINE and Company against PARSONS and GOVETT.

THOMAS JEFFREY of London accepted a bill drawn on him by Macalpine and Company of Perth. It was afterwards indorsed successively to three different parties in England, the last of whom were Parsons and Govett.

No 174.

No 175.

An indorser found liable in recourse, who had certain private knowledge of the dishonour, although no regular notification.

No 176.

Regular negotiation not required in accommodation-bills.