

Burnside was at this time in an account-current with James Robertson,

	Dr.		Cr.	
1792.		1793.		
Dec. 10. To Robertson's acceptance without value,	£400 0 0	March 9. By Arch. Muir's bill indorsed to Robertson,	£400 15 3	
1793.		April 15. By cash,	197 12 0	
March 14. To cash,	260 0 0	Balance due to Robertson,	61 12 9	
	£660 0 0		£660 0 0	

No. 6.
 days of bankruptcy, which had been reduced so far as it related to prior debts, sustained as a security for money advanced between the date of the indorsation and actual bankruptcy.

Ogilvie brought a reduction of the indorsation to Muir's bill on the act 1696, C. 5. and obtained decree in absence.

Robertson raised a reduction-reductive.

The Lord Ordinary assolizied the defender.

Robertson, in a reclaiming petition, contended, *1mo*, That the act 1696 did not apply to the indorsation in question; *2do*, That at least he ought to be allowed retention to the extent of the £260. afterward advanced by him. The Lords (11th March 1797) refused the petition on the first point*; but remitted to the Lord Ordinary to hear parties on the second.

His Lordship "sustained the compensation pleaded, to the amount of "£260."

Ogilvie now reclaimed, contending, *inter alia*, That as it was established that Robertson had got possession of the bill in consequence of a constructive fraud, he could not be allowed to plead compensation on it.

Answered: The sanction of the act 1696 applies only to securities for prior debts, and not where money is either immediately or afterward advanced by the creditors; 1st March 1791, Stein's Creditors against Sir William Forbes, J. Hunter and Company, No. 204. p. 1142.

The Court, on advising the petition with answers, being clear that the judgment was right, adhered.

Lord Ordinary, *Stonefield*. Act. *Greenshields*. Alt. *Fletcher*. Clerk, *Colquhoun*.
 D. D. Fac. Coll. No. 91. p. 210.

1799. January 19. WILLIAM HENDERSON against ALEXANDER DUTHIE.

JOHN WEMYSS and Son of Dundee, granted a promissory-note, dated 20th April 1797, and payable three months after date, to Alexander Duthie of Aberdeen. After indorsing it himself, and getting it indorsed by William Downie and Alexander Cheyne, Mr. Duthie discounted it with William Henderson, agent for the Bank of Scotland at Aberdeen, by whom it was transmitted to Edinburgh to James Fraser their treasurer.

The note became due on the 22d July 1797, when it was presented to Wemyss and Son; but they having become insolvent some weeks before, it

No. 7.
 The holder of a promissory-note found, in the circumstance of this case, to have preserved his recourse against an indorser, although a delay of twenty-one days had

* See August 10th 1780, Campbell against Macgibbon, No. 202. p. 1139.

No. 7. occurred in the notification of its dishonour.

In order to preserve recourse against a prior indorser, it is not necessary to notify the dishonour to those posterior to him.

was dishonoured, protested for not payment, and returned along with the protest to Mr. Fraser, who immediately sent it, and the protest, in a letter dated 24th July, to Mr. Henderson, in order that he might operate recourse against the indorsers.

Mr. Fraser's letter, however, being addressed simply to "William Henderson, Esq. Aberdeen," it was forwarded from that place to Shetland to a gentleman of that name, who had been a short time before in Aberdeen, and had afterward set out for that island. Another letter, of the same date, from Mr. Fraser to Mr. Henderson, the agent for the Bank, came safely to hand on the 25th July.

Mr. Henderson wrote Mr. Fraser on the 26th, in which he acknowledged the receipt of this last letter. Mr. Fraser wrote Mr. Henderson on the 28th, and again on the 4th August. This last contained the following paragraph; "Yours of the 21st *ult.* was duly received, and owned receipt of in mine of "the 24th *ult.* which I hope you have received by the time this reaches you."

As the letter, however, of the 24th, which Mr. Henderson had received from Mr. Fraser, contained no such acknowledgment, the former now began to suspect that another letter of that date had miscarried. He accordingly wrote to Mr. Fraser, mentioning this suspicion, in consequence of which that gentleman, on the 11th August, sent a copy of the missing letter to Mr. Henderson, who passing by Cheyne and Downie, the two immediate indorsers, notified the dishonour of the note on the 14th August, being the twenty-first day after it was protested, to Mr. Duthie, who refused to pay it; and in a suspension of a charge given him by Mr. Henderson,

Pleaded: The Bank of Scotland are to be considered in this case as the holders of the note, and Messrs. Fraser and Henderson merely as their Agents. Now, by the 12 George III. C. 72. the holder of a bill loses his recourse against the indorsers, unless he give them notification of its dishonour within fourteen days. Even supposing, however, that the charger were to be viewed in the character of last indorser, the received doctrine is, that the notification among indorsers ought to be as speedy as possible; 14th February 1781, Elliot against Bell, No. 167. p. 1606. Kyd's Treatise on bills, Edit. 2. p. 81. But there was here both undue delay and carelessness on the part of the agents for the bank. It was owing entirely to the imperfect address of Mr. Fraser's letter of the 24th that it miscarried, and therefore the bank alone should suffer. At any rate, as Mr. Henderson, in his letter of the 26th to Mr. Fraser, did not acknowledge the receipt of the missing letter, Mr. Fraser ought to have transmitted a copy of it in his letter of the 28th. Nor is this all; for even when he did so, in his letter of 11th August, which, in regular course, Mr. Henderson must have received on the evening of the 12th, he allowed the whole of the 13th to elapse without notifying the dishonour to the suspender, although they both resided in the same town. There was also an irregularity on the part of the

charger, in not intimating the dishonour to Cheyne and Downie, the two immediate indorsers.

No. 7.

Answered: The miscarriage of the letter of the 24th July happened *causa fortuito*, and as the charger acknowledged the receipt of one letter of that date, it was natural for Mr. Fraser to conclude that both had come to hand. No such negligence therefore occurs in this case, as can deprive the charger of his recourse; 2d December 1782, Hodgson and Donaldson against Bushby, No. 168. p. 1608; 23d May 1790, Carrick against Harper, No. 173. p. 1614.

The Lord Ordinary took the case to report on memorials.

The Court thought the excuse for the delay in the notification was sufficient to save the charger's recourse. It was also observed by some of the Judges, that the failure in giving due intimation of dishonour, does not entirely take away the right of recourse, but only affords a claim for damages, and that as Wemyss and Son were bankrupt before the note became due, none had been sustained by the suspender.

The Lords unanimously found the letters orderly proceeded, and expenses due.

Lord Ordinary, *Craig*
Alt. *W. Baird*.

For the Charger, *H. Erskine, Walter Scott*.
Clerk, *Colquhoun*.

R. D.

Fac. Coll. No. 104. p. 241.

1799. June 21.

RICHARD JOHN LAMBTON and Company, *against* JOHN MARSHALL and Others.

ON the 17th of March 1797, John Marshall, for Carrick Brown and Company, bankers in Glasgow, drew a bill, bearing to be his "first of exchange," on Moffat, Kensington and Company, their correspondents in London, payable to George Millar and Company, or order, fifty days after date; consequently, the 6th May was the day of payment, and the 9th the last day of grace.

It was indorsed by Millar and Company, and after passing through several other hands, came into possession of Weatherall and Geering of London, whose clerk, on the 17th April, had his pocket-book, containing the bill, stolen from him, as he was carrying it for acceptance.

The theft was notified in the Daily Advertiser of the 18th. But the bill not being recovered, Marshall granted a second, "his first of the same date and tenor not being paid," on receiving an obligation from Weatherall and Geering to indemnify his Company against the appearance of the first.

On the 5th of May, the first bill, with seven blank indorsations on it, was presented to Richard John Lambton and Company, bankers at Newcastle, by the last indorser of it, with whom they were totally unacquainted.

No. 8.

An onerous indorsee is entitled to payment of a bill from the drawer, although it have been stolen from a former holder of it.