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; 28d 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.* For the Charger, *H. Erskine, Walter Scott.*
Alt. *W. Baird.* Clerk, *Colquhoun.*

R. D. *Fac. Coll. No.* 104. *p.* 241.

1799. *June* 21.

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

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.

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. They discounted and remitted it to their correspondents in London, who presented it to Moffat and Company for payment on the 9th May.

This was refused, as the second bill had been previously paid. The first bill was protested by Lambton and Company, and a charge given to Marshall for payment.

In a suspension, appearance was made for Weatherall and Geering, who with Marshall

Pleaded: Marshall in granting the second bill, acted according to established practice, and as the loss must fall either on Weatherall and Geering, or Lambton and Company, it ought to be borne by the latter, who, in discounting the bill to an utter stranger, not recommended to them, transgressed a rule of bankers, which is very salutary in preventing persons acquiring bills *mala fide* from obtaining payment; and particularly, after the advertisement of the 18th April the chargers cannot be considered as without blame in the transaction.

Answered: Marshall was not bound to grant a second bill, without being indemnified against the appearance of the first, as is evident even from the conduct of parties in this case; 9th and 10th William III. C. 17. § 3.

The chargers acted *bona fide*, and according to the established practice of bankers, who daily discount bills to utter strangers, (indeed travellers cannot always have letters of recommendation with them), trusting to their knowledge of the hand-writing of the other obligants, and having no concern with the terms on which it has been acquired by the present holders: Burrow's Reports, V. 3. p. 1516, &c. and 1520, &c. V. 1. p. 452. Douglas's reports, p. 611, 633, 634. Kyd, p. 104, 105.

Weatherall and Geering ought to suffer from the inattention of their clerk originally; and from their notifying their loss in the Advertiser only, which is not read at Newcastle, and not in the London Gazette and provincial newspapers, and otherwise, as is usual in similar cases.

The Lord Ordinary, "In respect it is averred by the chargers, that they did "*bona fide* pay full value for the indorsation to the bill charged on, and that "the suspender has offered no evidence to the contrary, or to show they were "in the knowledge of the said bill having been stolen from, or lost by the clerk "of Messrs. Weatherall and Geering, found the letters orderly proceeded, re-"serving the suspenders claim of relief against them."

Upon advising a petition with answers, the Lords, on the general ground, that there is no *rei vindicatio* against onerous holders of bills and bank-notes, unanimously "adhered."

Lord Ordinary, *Cullen.* For the Chargers, *Ar. Campbell.*
Alt. *Solicitor-General Blair, Davidson.* Clerk, *Sinclair.*

D. D. *Fac. Coll. No.* 132. *p.* 302.