

No 152.

later, as their exigencies shall require, unless they are guilty of a *lata culpa*. The delay of presenting is rather a favour to the drawer, as till that time it cannot be put to the drawer's debit. Accordingly, it has been found, that bills drawn on sight did not require the same rigorous negotiation with bills payable on a day certain, 7th February 1735, Innes *contra* Gordon, No 138. p. 1562.

*Replied*, The defenders had no dealings with the pursuer, nor any reason to doubt that the bill was to be transmitted in course of post, otherwise they would have chosen a more certain way of drawing their money from Holland. The case must be determined, therefore, on the general rules of law, drawn from the nature of the contract Mandati, l. 13. C. Mandati. There is no other difference between bills drawn on so many days sight and those at a fixed day, than what arises from the nature of the thing, which, as to the former, must occasion a little uncertainty even when sent by post. But still it is incumbent on the porteur to transmit the bill with all convenient speed, that the mandate may receive its final completion. When the porteur studies his own conveniency, or is uncertain of his arrival, he takes letters of credit, and not bills on sight. The reason why the drawer supercedes payment for some days, after presenting, is for the conveniency of his correspondent. It is contrary to the principles of such a contract, to suppose any favour to the drawer in delaying the negotiation of this bill, which implies a reciprocal obligation on the drawer, to warrant the solvency of the person on whom it is drawn, and upon the porteur to use all reasonable diligence; Bankton, v. 1. p. 359. § 7.; Erskine, b. 3. t. 2. § 32. In the case of Innes *contra* Gordon, the difference of time was only *four days*, had the bills been sent by post; and the case was nevertheless so doubtful, that the parties agreed it, without waiting a second interlocutor.

'THE LORDS repelled the defence, That the bill was not duly presented for acceptance.'

Reporter, *Bankton*.Act. *Lockhart*.Alt. *Rae, Ferguson*.Clerk, *Home*.*Rae*.*Fac. Col. No 199. p. 355.*

No 153.

Recourse  
sustained  
upon a promissory note,  
where the  
dishonour  
was duly notified,  
although the  
note itself  
and protest  
were not immediately  
returned.

1760. December 18. COUTTS and COMPANY *against* NISBET.

DAVID LEITCH, upon the 27th of April 1758, granted a promissory-note, dated at Glasgow, in the following terms: 'Sixty days after date, I promise to pay to the order of Mr David Nisbet, L. 55 Sterling, at the house of Malcolm Hamilton, and Company, merchants in London, for value received.'

Nisbet indorsed this note to Coutts and Company; they indorsed it to Moses, ironmonger of Birmingham; and he to Messrs Parkingsons, merchants in London.

When the note became due, it was presented for payment at London; and, upon refusal, was duly protested against David Leitch, and all others concerned.

It was admitted, that the dishonour was notified in due time to Mr Nisbet. The note and protest being returned; Messrs Coutts brought a process against Mr Nisbet for payment.

No 153.

*Pleaded* for the defender, Though the dishonour of the note was properly notified, yet the note itself, and the protest, were not transmitted to Scotland, or presented to the defender for payment, till a month after the date of the protest: That in all such cases, not only must the dishonour of the bill be timeously intimated to the indorser, but the bill itself must be immediately transmitted, and payment demanded; and that this is the opinion of merchants who have been consulted upon the question: That in the present case, Leitch was now become bankrupt; and, if the note had been timeously transmitted, payment might have been recovered from him.

*Pleaded* for the pursuer, As this note was payable in England, and passed by indorsation through several hands in that country, it must be regulated by the law of England; and by the statute *quo. & como Guliel. cap. 17.* joined with the act 3d and 4th of Queen Anne, cap. 9. it is sufficient, that due notice be given of the dishonour within fourteen days. Neither of these acts require, that the note itself, or protest, should be transmitted within any limited time. Besides, it is impossible, that the holder of the note can transmit the only document he has for the debt, until he has received payment.

THE LORDS found the defenders liable in payment of the contents of the note, with expences.

Avt. Miller.

Avt. Lockhart.

Clerk, Home.

P. Murray.

Fol. Dic. v. 3. p. 88. Fac. Col. No 262. p. 488.

1761. June 13.

MESSRS. ALEXANDER BROWN and SON, Merchants in Edinburgh, *against*  
MATTHEW CRAWFURD, Merchant in Glasgow.

Mrs EDIE of Perth had been in use to furnish Matthew Crawford with linen yarn, for which he sometimes paid money, and sometimes sent her bills on Edinburgh or London. In May 1758, he sent her, indorsed, a promissory note of one David Leitch, in the following terms: 'Glasgow, 11th May 1758. Forty-six days after date, I promise to pay to the order of Mr Matthew Crawford, the sum of L. 25 Sterling, at the house of Malcolm Hamilton and Company, merchants in London, for value received.'

This note Mrs Edie put into the hands of Messrs Brown the pursuers, who sent it to their correspondent at London, and he did not protest it for not payment till seven days after the days of grace were expired; but immediately thereafter gave notice of the dishonour to the pursuers, who intimated the same in course to Mr Crawford.

No 154.

Found, that the negotiation of a promissory note, payable in England, must be regulated by the law of England.