1780. *July* 18.
SIR GEORGE COLEBROOK and COMPANY, *against* WILLIAM and JAMES DOUGLAS.

No 165.
The oath of an agent for a company received in supplement of proof arifing from a private noting of his own, relative to due negotiation by the Company, of a bill, of which the agent himfelf was an indorfer.

A BILL, drawn on a houfe in London, had been indorfed by William and James Douglas in Glafgow to Simon Brown, agent in the fame town for Douglas, Heron, and Company, when it was again indorfed to Sir George Colebrooke and Company in London.

The bill being prefented to the drawees, firft for acceptance, and afterwards for payment, both were refufed; upon which Sir George Colebrooke ufed diligence againft William and James Douglas, who brought a fufpenfion of it on this ground, that due intimation of the difhonour had not been made to them.

The chargers, on the contrary, affirmed, that timeous notice of both refufals had been given to the fufpenders by Simon Brown, their door-neighbour, being communicated to him by the cafhier at Edinburgh, who had received it from London; in fupport of which averment, they produced the cafhier's letters to Brown, with a notandum adjected to each of them in Brown's hand-writing, bearing, that he had read or fhown them to the fufpenders.

And they *contended*, That this evidence ought to be held as fufficient; at leaft, that it might be rendered complete by the oath of Brown.

The fufpenders, on the other hand, *insisted*, That fuch informal notings were neither entitled to credit of themfelves, as they could not be admitted to prove their own dates, nor could they receive any fupport from the evidence of Brown, who being likewife one of the chargers' indorfers, and fubject to their claim of recourfe, was plainly a party in the caufe.

Answered: Brown had no patrimonial intereft in the matter, which he tranfacted merely as an agent for other perfons.

THE COURT required information concerning the practice of merchants in their manner of intimating the difhonour of bills to fuch indorfers or drawers as live in their near neighbourhood. This enquiry was made of two refpectable banking-houfes in Edinburgh,* whofe anfwer was to this effect: 'When we receive 'notice from London of the difhonour of a bill indorfed to us by a neighbour, 'our ufual way of acquainting him of it is either by a card or letter. When we 'make the intimation by a card, we do not think it neceffary to keep a copy of 'it, not fufpecting that a neighbour, with whofe character we are acquainted, 'will difpute the intimation; and knowing, if he fhould difpute it, that the de-'livery of the card can be proved by the bearer of it. But if we have any rea-'fon to think a greater degree of caution neceffary, we make the intimation 'by letter, and infert it in our copy-book of letters.'

THE LORDS were of opinion, That the alleged mode of intimating the difhonour was fufficiently formal; and that if the evidence arifing from the mark-

* Sir William Forbes, James Hunter, and Company; and Mansfield, Ramfay, and Company.

No 165.

ings affixed by Brown to the cashier's letters were corroborated by the oath of the said Brown, this would be satisfactory evidence of such intimation. They therefore allowed Brown to be examined; and his deposition confirming the afore-mentioned allegation,

'THE LORDS found the letters orderly proceeded.'

Lord Reporter, *Justice Clerk*. Act. *Wight*. Alt. *Arch. Campbell*.
Stewart. *Fol. Dic. v.* 3. *p.* 85. *Fac. Col. No.* 118. *p.* 217.

1781. *February* 13.
DOUGLAS, HERON, and COMPANY, *against* ROBERT ALEXANDER.

No 166.
Found in conformity with the above.

ALEXANDER, for behoof of Douglas, Heron, and Company, indorsed a bill to John Christian, their cashier at Ayr, and who was likewise one of their numerous partners. Being dishonoured, it was regularly protested; and a note, under the hand of Christian, appearing on the back of it, bore that the dishonour had been duly intimated to Alexander. Diligence having followed, a suspension was raised; in the course of which process, Christian emitted an oath, corroborative of the above-mentioned marking.

Pleaded for the suspender: Christian, being not only the cashier, but likewise a partner of the Company, his testimony is inadmissible.

Answered for the chargers: It is a method universally received in mercantile practice, to notify the dishonour of bills verbally, or by a card, without the writing of a formal letter, a copy of which is to be entered in the letter-book. Hence, if cashiers, or other persons intrusted with the affairs of merchants, be not admitted, as habile witnesses, it will often be impossible to obtain any proof in such a case; and it would be very hard, were the possession of a small share in the stock of a company to disqualify them. Upon these grounds the Court determined the question between Sir George Colebrooke and Co. and William Douglas and Co. (*supra*) a case, in every particular, similar to the present.

THE COURT 'found the intimation sufficiently proved.'

Lord Ordinary, *Kennet*. Act. *Wight*. Alt. *Macormick*. Clerk, *Tait*.
Stewart. *Fol. Dic. v.* 3. *p.* 90. *Fac. Col. No* 34. *p.* 59.

No 167.
Found, that notification of dishonour to the last indorser, was not, *per se*, sufficient to preserve recourse against prior indorsers.

1781. *February* 14. DAVID ELLIOT *against* JOHN BELL.

WILLIAM BELL granted to John Bell his promissory note for L. 560. John Bell indorsed this note to John Grant, by whom it was again indorsed to David Elliot.

Elliot not having recovered payment from William Bell, the granter of the note, intimated the dishonour to Grant, the last indorser, but made no intima-