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mation thus neceſſary to every one of a numerous train of perſons whoſe names appear on bills, but many, or moſt of whoſe additions or deſignations may be unknown to the holder, would mightily embarraſs mercantile tranſactions. It is a miſtake to ſuppoſe that a merchant never truſts to the ſecurity of perſons of the latter deſcription. He may be ignorant of their deſignations, or of the places of their reſidence, yet well enough acquainted with their character, in reſpect of credit. He may, even though uninformed of all theſe circumſtances, properly place confidence in names, ſtrange to him, when he ſees that certain prior holders whom he knows have already truſted to them. Hence, it appears, that the obſtruction to the uſefulneſs of bills which would follow, were the oppoſite doctrine to prevail, conſiſts not only in a tedious and burdenſome incumbrance, but even in an actual diminution of the ſecurity which they afford; while the inconvenience ſtated by the defender is almoſt imaginary, ſince it can occur only in a very few ſingular inſtances, like the preſent. For, it is plain, the ſenſe of his own intereſt muſt inſtantly prompt the laſt indorſer to communicate the notice of diſhonour to the immediately preceding one, who, in the ſame manner, will give it to the ſecond, he to the third, and ſo *retro* up to the drawer. Here, then, a diſadvantageous conſequence, which of neceſſity can but rarely happen, is ſet in oppoſition to others likewiſe pernicious, which, as neceſſarily, muſt be continually occurring.

Though there are no deciſions of the Court on this point, yet the purſuer's plea is ſupported by Erſkine, 3. 2. 27.—33.; and by Stat. Geo. III. 12. cap. 72.: And, with reſpect to the law of England, by Stat. Wil. III. 9. 10.; Burrow's Rep. vol. 2. p. 669.

THE LORDS 'found, that notification to the laſt indorſer was not, *per se*, ſufficient to preſerve or eſtabliſh recourſe againſt the prior indorſers.'

Lord Ordinary, *Alva.* Act. *Il. Campbell, H. Erskine,* et *Arch. Campbell.* Alt. *A. Crosbie* et *Alex. Ferguson.*

Stewart. *Fol. Dic. v.* 3. *p.* 88. *Fac. Col. No* 36. *p.* 65.

1782. *July* 18. HODGSON and DONALDSON *against* BUSHBY.

No 168.
Recourſe was not loſt by failure to intimate the diſhonour of a bill to an indorſer; the holder being ignorant of the indorſer's place of reſidence.

MR BUSHBY of Ardwell in Scotland, when in London, adhibited his name as indorſer to a bill accepted by Benjamin Graham, delivered to Hodgſon and Donaldſon, and payable in London, two months after date. This bill, when it became due, was regularly proteſted againſt the acceptor for not payment; but the indorſer having left London, and the holders being unacquainted with his place of reſidence in Scotland, no intimation of the diſhonour was ſent to him for twenty-one days thereafter.

In a proceſs, at the ſuit of the holder, for recourſe againſt the indorſer, who objected the want of due notification, the LORD ORDINARY, 3d July 1781, repelled the defence, 'in reſpect it was admitted, that the defender left London, the then

'place of his reſidence, before the bill became due, and left no notice where 'he might be found, or wrote to.' No 168.

The defender reclaimed; and

Pleaded: That the obligations upon drawers and indorſers of bills of exchange, may be attended with the leaſt poſſible inconveniency or hazard to them, and terminated within a period ſuited to the ſecurity they are intended to create, univerſal practice has impoſed a neceſſity upon the holders, to notify the diſhonour within a limited time, under the penalty of forfeiting their recourſe againſt thoſe to whom ſuch intimation is not given. Hence, a profeſſor of bills muſt inform himſelf of the place at which intimation of the diſhonour may be given to thoſe againſt whom he means to come for his payment; and if, by neglecting this precaution, timely notification is not ſent, he alone muſt ſuffer thereby. In this caſe, the holders, upon inquiry, would have been informed, that the defender was only occaſionally in London, and reſided ordinarily on his eſtate of Ardwell in Scotland, at which place they might have acquainted him, within the uſual time, of the bill's not having been paid.

The Lord Ordinary's interlocutor has taken for granted, that a perſon having ſet his name to a bill, at any place, muſt, upon leaving it, give notice to the holders where he may be found or wrote to. But in what manner can that be done? A bill may paſs through a thouſand hands, or it may be tranſmitted to a foreign country. How is it poſſible for the drawers or indorſers, in ſuch inſtances, to comply with this regulation? It is accordingly unknown in practice; and, if introduced by a precedent in this caſe, would be attended with the moſt pernicious conſequences to trade. A queſtion of a ſimilar nature was lately decided by the Court. One Bell indorſed a bill to Grant, who indorſed it to a banking company at Glaſgow. The bill having been diſhonoured, and the diſhonour intimated to Grant, the laſt indorſer, who proved unable to pay, an action of recourſe was brought againſt Bell, the prior indorſer, to whom no intimation had been given. In ſupport of this action, the holders urged the impoſſibility of their knowing all the prior indorſers of a bill, and that it was therefore ſufficient to intimate to the laſt indorſer, whoſe duty it was, to acquaint his author with the diſhonour. But in *answer* to this, it was ſucceſsfully maintained, that the holder of a bill accepted of it upon the credit of the indorſers he knew, not of thoſe of whom he was ignorant; that if he knew them, it was his buſineſs to have acquainted them with the acceptors not having retired the bill; and, if he knew them not, there was no hardſhip in denying him recourſe againſt them; Elliot *contra* Bell, 14th February 1781, No 167. p. 1606.

Answered for the purſuers:—The neceſſity of intimating the diſhonour of bills is not diſputed. But in this, and in every other caſe, where a condition, introduced in favour of any perſon, is diſappointed by his fraud or negligence, it is held in law to be fulfilled, and the obligation to which it is annexed is thereby purified. The bill in queſtion was accepted, indorſed, and payable in London. The indorſer, by leaving London before it was exigible, without as-

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quainting the holders whither intimation of the diſhonour might be ſent, rendered the execution of that formality impracticable in the ordinary way. But the holders made immediate inquiry at the perſons at whoſe entreaty they advanced money for this bill, and according to the earlieſt intelligence of the defender's reſidence, they regiſtered the bill, and uſed a charge of horning againſt him upon it. In the caſe quoted, the Court did not determine what circumſtances excuſed the holder of a bill from giving intimation within the uſual period, but found, that intimation to the laſt indorſer did not, *per se*, preſerve recourſe againſt the prior indorſers.

Upon adviſing this argument, the LORDS ſeemed agreed to alter the Lord Ordinary's interlocutor, and to aſſoilzie the defender; but, it having been ſeparately contended by the purſuers, that, at the delivery of this bill, they had made ſpecial inquiry after the indorſer's place of reſidence, and had been informed that it was in a particular ſtreet in London, where they had accordingly ſought for it when the bill became due, the LORDS ordered a condeſcendence of facts to be given in, and allowed a proof.

Fac. Col. No 56. *p.* 88.

*** This caſe was appealed.—The HOUSE of LORDS ORDERED and ADJUDGED, That the appeal be diſmiſſed, and the interlocutors complained of reverſed; and that the interlocutor of the Lord Ordinary of 3d July 1781 be affirmed.

12*th May* 1783, *Journals of the House of Lords.*

*** Follows ſequel of the ſame caſe:

The Lords were of opinion, though they did not find it neceſſary to decide, That a receipt by the holder of a bill of exchange, of a partial payment from the acceptor, after a proteſt taken for not payment, does not liberate the drawer and indorſers. The ſame opinion was expreſſed in the Houſe of Lords upon appeal.

1782. *Dec.* 2. In this caſe, the Lords having been of opinion, on the principles ſtated in the above report, 18th July 1782, that it was not incumbent on a perſon, upon leaving the place where he had indorſed a bill of exchange, to acquaint the holders where he was to be found or written to; Hodgſon and Donaldſon offered a proof, that, in this inſtance, they had inquired after Mr Buſhby's place of reſidence in London, and had endeavoured, when the bill became due, to find him there.

Mr Buſhby then offered this new defence, that the purſuers having, after proteſt, received a partial payment from the acceptor, they could not reſort to the drawer or indorſers; in ſupport of which he

Pleaded: At any time before proteſt, the holder of a bill of exchange may receive a partial payment, and, by marking the ſum on the back of the bill, and proteſting for the remainder, may ſecure his recourſe for what is unpaid; Marius, p. 86. 87.; Scarlett, p. 126. 127. § 8. But, as a diſhonoured bill ought to be returned immediately to thoſe liable in recourſe; if after taking proteſt for not payment the holder ſhall receive the ſmalleſt ſum from the acceptor, this imports an abandonment of his claim of relief.——Lord Raymond, vol I. p. 743.

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Answered: If the holder of a bill of exchange has made regular intimation of the diſhonour, no reaſon can be given, why his receipt of a partial payment, which is highly beneficial to thoſe liable in recourſe, by diminiſhing the extent of that obligation, ſhould forfeit his claim againſt them. Accordingly, this defence, which reſts entirely on the authority of Lord Raymond, unſupported by any precedent, is contradicted by the deciſion, Brown *contra* Hume, 14th November 1705. No 126. p. 1546.

No preciſe *judgment* was given on the merits of this defence, though ſome of the Judges expreſſed their opinion that it was ill founded; and as a deciſion ſuſtaining it would at once have ſuperſeded any further proceeding, the interlocutor of the Court, allowing a proof of the circumſtances alleged by the purſuers, and determining on the import of it, may be conſidered as an indirect rejection.

Upon adviſing the proof adduced by the purſuers, which did not ſeem to ſupport their averments, the LORDS 'altered the Lord Ordinary's interlocutor, and found, That no recourſe lay againſt the defender, as indorſer of the bill in queſtion.'

Lord Ordinary, *Elliock.* Act. *Elphinston.* Alt. *Ilay Campbell.* Clerk, *Orme.*

Craigie. *Fol. Dic. v.* 3. *p.* 89. *Fac. Col. No* 73. *p.* 112.

*** This interlocutor was reverſed, in the Houſe of Lords, by the judgment mentioned above.

1784. *February* 20.

STIRLING BANKING COMPANY *againſt* DUNCANSON'S REPRESENTATIVES.

No 169.
An informal execution of a horning was not ſuſtained as evidence of intimation of the diſhonour of a bill.

DUNCANSON became indorſer of a bill, without value, at the requeſt of James Guild, to enable him the more readily to get it diſcounted. It was dated 20th December 1782, payable three months after date, drawn by Robert Campbell, and accepted by Guild for L. 90.

The Stirling Banking Company, who had diſcounted it, proteſted it in due time, and the proteſt was regiſtered. Letters of horning were raiſed, and put into the hands of a meſſenger, who returned an execution of charge againſt Duncanſon, dated 3d April 1783, the 12th day after the laſt day of grace.

Duncanſon was in the bank office on 8th May, or about ſix weeks after the bill had become due, when the diligence againſt him was mentioned. He brought a ſuſpenſion on the ground, that no charge had been given to him, nor any information of the diſhonour of the bill.

THE LORD ORDINARY 'in reſpect the ſuſpender had failed to propone improbation of the execution, repelled the reaſons of ſuſpenſion, and found the letters orderly proceeded.'