

No 169.

Improbation was now proponed ; and the questions at issue came to be, Whether the execution was regular and valid ; and, although irregular, whether, notwithstanding, it did not afford sufficient evidence of intimation of the dishonour, within fourteen days from the date of the protest.

The execution of the horning turned out to be informal. The name of one of the witnesses was forged ; and the evidence of the witnesses who were examined, did not ascertain that any charge had been actually given.

THE COURT held, that even verbal intimation of the dishonour of a bill, if it were distinctly ascertained that such had been given, would have been sufficient ; although private knowledge, without information from the holder, would not ; but that here there was no evidence of intimation. The letters were suspended, and expences found due.

Ordinary, *Lord Eskgrove.* For Chargers, *R. Hodgson Coy.* For Suspenders, *D. Cathcart.*  
Clerk, *Menzies.*

*See Session Papers in Signet Hall.*

1786. June 29.

No 170.

When the last day of grace happens to be Sunday, the bill must be protested on the day preceding. A bill protested on the day following, was found not duly negotiated.

SMITH and PAYNE *against* LAING, ARTHUR, and COMPANY.

A BILL drawn and accepted in London, was indorsed to Laing, Arthur, and Company, in Scotland. It was afterwards indorsed to Smith and Payne of London. The last of the days of grace happened to fall on a Sunday, and the bill was not protested till the day following.

Smith and Payne, the last indorsees, having for their recourse used diligence against Laing and Company, prior ones, the latter brought a process of suspension, on this ground, That recourse was barred by undue negotiation, as the protest ought to have been taken on the second, and not delayed till after the last day of grace was expired. And, in support of this objection, they

*Pleaded,* When the third of the days of grace falls on a Sunday, the rule is, That the bill should be protested on the preceding day ; Ramsay *contra* Hogg, No 140. p. 1564. ; Cruickshanks *contra* Mitchell, No 145. p. 1576. This rule is general with regard to all bills, whether *inland* or *foreign* ; 9th January 1731, M'Kenzie *contra* Urquhart, No 137. p. 1561. ; Bankton, vol. 1. p. 364. § 23.

If the law of England, as that of the *locus contractus*, were to govern this question, the same rule would still be admitted ; this bill, in the construction of that law, being, with respect to the present parties, a foreign one. For the indorsation to persons in this country would be deemed equivalent to a new, and consequently a foreign bill. ' When a bill of Exchange, (to use the words of the Earl of Mansfield) is indorsed by the person to whom it was made payable, as between the indorser and indorsee, it is a new bill of exchange, and the indorser stands in the place of the drawer.' Burrow's Reports, vol. 2. p. 674.

*Answered*, Both the drawer and the drawee having been resident in England, the bill in question is *inland*, and not *foreign*. Erskine, b. 2. tit. 3. § 25.; Blackstone's Commentaries, vol. 2. p. 467.

By the law of England, the *lex loci contractus*, the protesting of *inland* bills at all is not necessary for recourse, except as to interest and charges; and even then it is only required *after* the expiration of the three days of grace; statute 9th and 10th William III. cap. 17.; Bankton, vol. 1. p. 369. § 2.; Raymond Rep. p. 993. Brough *versus* Parkins; Blackstone, vol. 2. p. 469. And a similar decision was pronounced by this Court, with respect to a bill payable in London, which had not been protested till the fourth day after it became due. Bruce, 1st February 1715, Johnston *contra* Murray, No 132. p. 1556.

THE LORD ORDINARY sustained the plea of undue negotiation as a ground of suspension; and

THE COURT adhered to the interlocutor of the Lord Ordinary.

Lord Ordinary, Stonefield.  
Clerk, Robertson.

For Suspenders, Neil Fergusson. Alt. A. Campbell.

Stewart.

Fol. Dic. v. 3. p. 83. Fac. Col. No 282. p. 434.

1787. June 14.

JAMES MAGADAM *against* ALEXANDER MACWILLIAM.

CERTAIN bills drawn by Macwilliam, and accepted, were indorsed to Macadam, after some intermediate indorsations, and after being protested. The acceptor having become bankrupt, the indorsee sued the drawer for payment; who, in defence,

*Pleaded*: 1st, The bills, after protest, could not be transferred by indorsation; and, 2dly, They have not been negotiated according to those rules which are established for the preserving of recourse.

*Answered*: 1st, During the whole of the statutory period, bills pass from hand to hand as bags of money; and it seems absurd to conceive, that their being protested should deprive them of this privilege. 2dly, Regular negotiation is not to be required of bills that, for the sole purpose of raising money to accommodate the drawer, have been accepted without value; such, in short, as are well known by the appellation of *Wind-bills*.

THE LORD ORDINARY reported the cause; and

THE LORDS repelled the above defences.

Reporter, Lord Stonefield.  
Stewart.

Adv. Ross. Alt. Abercromby, Maconochie. Clerk, Home.

Fol. Dic. v. 3. p. 88. Fac. Col. No 334. p. 514.

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No 170.

No 171.

The drawer not entitled to require regular negotiation of such bills as are granted merely for his accommodation.

Bills pass by indorsation as well after as before protest.