

It was *replied*, There is no law nor settled custom for rejecting payments upon receipts a-part ; and there is here also a speciality, that the bill is indorsed no ways to militate against the indorser ; and the indorser being but a trustee, the suspender was *in optima fide* to make payment to the true creditor in the bill.

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It was *duplicated*, The Lords have, of late, had respect to no exception that might diminish the credit or currency of bills of exchange ; and there is in this case not only the opinion of Mr Forbes, but the practice of trading nations, and especially the merchants of this country ; and the Ordinary, for his fuller satisfaction in this matter, having desired the opinion of merchants of the first credit, their is a report of two merchants, one named by either party, declaring the constant practice of merchants to be for the charger ; and that the speciality of providing that there shall be no recourse against the indorser, makes no alteration. It is not, nor can be pretended, but that the charger obtained the indorsation for a just and onerous cause, and therefore ought not to be disappointed of the security that all merchants do rely upon.

‘ THE LORDS repelled the reason of suspension.’ See No 91. p. 1501.

*Fol. Dic. v. 1. p. 98. Dalrymple, No 109. p. 152.*

1714: July 9.

JOHN MITCHEL, Merchant in Edinburgh, against ALEXANDER BROWN, Merchant there.

THOMAS SCOT, by commission from Alexander Brown, buys goods from Mr Wilks in London, to the value of L. 50 Sterling, on six months trust ; for which Brown draws a bill on Scot, payable to Wilks, which Scot accepts ; and, for Scot’s reimbursement, Brown accepts a bill for the like sum, payable to Scot at the same time that the bill to Wilks falls due.

Scot suffers his accepted bill to Wilks to be protested ; and, at the same time, viz. the 3d of April 1714, draws a bill, for the like sum, upon Brown, payable to Alexander Mitchel, or order ; and, notes upon the back of Brown’s accepted bill, thus, ‘ 3d April 1714, This day, at 14 days sight, drawn on you for the contents of this bill, payable to Alexander Mitchel or order ; value which I have posted to your credit.’

Alexander Mitchel having indorsed the bill to John Mitchel ; and the same being protested for not acceptance, the said John, as creditor to Scot, arrests in the hands of Brown ; and others of Scot’s creditors likewise arrest ; and, thereafter, on the 11th of May, Scot indorses Alexander Brown’s accepted bill, bearing the note above-mentioned on the back thereof, in these words, ‘ Pay the contents to Mr Alexander Mitchel, or order, value received of him as above ;’ whereupon Brown being charged, suspends on these reasons: *imo*, As to the bill protested for not acceptance, he had no reason to accept, because he had no effects of Scot’s who had accepted his bill ; and, failing in his credit, had suffered it to be protested, whereby his bill would necessarily return upon him the drawer ; he had, therefore, good reason to retain, in his own hands, the money contained in his bill, accepted only for reimbursing Scot of what he ought to have paid to

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The possessor of an accepted bill drew for the same sum upon the acceptor. He at the same time noted upon the accepted bill, his draught for that sum. The acceptor of the first bill refused to accept the second. The possessor of the first bill having indorsed both to the same person ; the acceptor of first found liable to the indorsee.

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Wilks, and did not. *2do*, Neither could he be liable on the bill he had accepted; because Scot, the indorser, had suffered the bill drawn on him by Brown, payable to Wilks, to be protested; whereby Wilks had recourse upon Brown: And albeit bills of exchange are favoured in their transmission, and not liable to objections as other debts, yet the act of Parliament 1696, anent bankrupts, takes place in bills of exchange which are not indorsed for present value, but in payment or security of former debts, as was found, on very full debate, 16th January 1713, Campbell of Glenderowall against Graham of Gorthie, No. 192. p. 1120.; and thereupon Brown, the suspender, hath raised a declarator of bankrupt; and will make appear that Scot was entirely broken before he indorsed Brown's bill; and the said indorsation was made for obtaining payment of his other bill drawn upon Brown of the 3d of April, which Brown had most justly suffered to be protested; and now craved to be free, both of the said bill of the 3d of April, because he had no effects; and likewise to be free of his other bill indorsed by Scot, because Scot had failed in payment of his accepted bill to Wilks, and therefore could not indorse Brown's bill to Mitchel after he was become bankrupt.

It was *answered*: The whole reason of suspension resolves in that of bankrupt; which can take no place in this case, because it is most certain, that the bill drawn by Scot, on the 3d of April, was for money paid down; and, of the same date, Brown's bill payable to Scot, was noted upon the back as above-mentioned, which did connect Brown's accepted bill with the bill drawn by Scot upon him; so that Mitchel had not only a bill drawn upon Brown, but had a sufficient document to oblige Brown to accept and pay; and though the indorsation was posterior, by that he had only the benefit of more ready execution; but, without an indorsation, Brown would have been obliged to have paid Scot's bill, upon production of the other bill noted on the back, so that Mitchel did not simply follow Scot's faith.

THE LORDS repelled the reasons of suspension, and found the letters orderly proceeded, No 62. p. 1467.

*Fol. Dic. v. 1. p. 98. Dalrymple, No 111. p. 154.*

No 95.

1734. February 14.

NEILSON *against* RUSSEL.

AN arrester of a sum in the hands of the acceptor of a bill, was preferred to an onerous indorsee; because the bill not being signed by the drawer, at the date of the arrestment, was considered, to have no privilege.—LORD KAMES has written this *notandum* upon the petition for the indorsee, ' Upon enquiry, I find \* the custom of merchants is otherwise.' See The particulars, *vide* BLANK WRIT.

See No 34. p. 1435. *Session Papers in Advocates' Library.*