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-

tion to John Bell, the prior indorſer; againſt whom, however, he raiſed an action for recourſe. No 167.

Pleaded for John Bell: Timeous notification of diſhonour muſt be made to every indorſer, whether prior or poſterior, upon whom recourſe is to be had. It is admitted, that regular intimation to the laſt indorſer is neceſſary to preſerve any recourſe, even againſt him; but this intimation cannot, *per se*, have the effect to ſave recourſe againſt the prior indorſers. Mercantile practice has not eſtabliſhed ſuch a conſequence, in itſelf ſo unreaſonable. An opinion, given by one of the moſt eminent merchants in Britain,* is produced in proceſs; from which it appears, that the practice is to notify to all the indorſers upon whom recourſe is claimed; to the laſt indorſer, within the legal time; to the prior, within a ſpace as yet unſettled, but ſuch as is not protracted by any undue delay. Timely intimation affords means of operating relief, which, it is evident, delay may often fruſtrate. Beſides, without ſuch intimation, a prior indorſer is naturally put off his guard againſt an unforſeen demand; a circumſtance that loads, with a grievous additional hardſhip, the power of making the demand. For what limit, in point of time, can be ſet to this power? It is indeed no other than the long preſcription; for that introduced among bills, by the late act of Parliament, extends not to the ground of debt. Hence, at any moment, and to any extent, however enormous, a merchant might be ſurpriſed with formidable claims, riſing out of old bill tranſactions, of which he had not even the leaſt remembrance. Such would be the unavoidable conſequences of the purſuer's doctrine. On the other hand, no inconvenience reſults from that of the defender. A perſon gives value for a bill on the credit of ſuch names only appearing upon it, as he knows, not of thoſe he is ignorant of; and, of courſe, it muſt be eaſy for him to make the requiſite notification.

With reſpect to authorities, there occur no deciſions of the Court on this point; nor are any of the deciſions given in England preciſely applicable. *See*, however, Forbes on Bills, cap. 6. § 16.; and in Cuning. Abridg.; Strange, 707; Pepys *versus* Sir John Lambert; alſo, *ibid.* § 9. p. 16.; Scarlet on Bills, § 5. cap. 19. *See* likewiſe *Ordinance of France* reſpecting bills of exchange.

Answered: It is an undiſputed point, that every perſon who, either as drawer or as indorſer, puts his name upon a bill, thereby, to the extent of the ſum it contains, pledges his ſecurity to every poſterior holder; unleſs he chuſes to avoid this conſequence, by ſubjoining to his ſubſcription the words, 'without recourſe.' From the nature of that obligation, it is evident, no neceſſity ariſes to the holder to give any other notification than his own diſcretion ſhould dictate. The expediency of commerce, indeed, may preſcribe, and has preſcribed certain limits to this freedom; as, by the appointment of intimation itſelf, and the regulation of the time within which it is to be given to the laſt indorſer. But no additional obligation has been created to force notification to any prior indorſer. Making inti-

* Sir Robert Herries.

No 167.

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