

1800. January 15. JOHN PHILIP, against JAMES and WILLIAM MILNE.

IN March 1787, James and William Milne accepted a bill payable three months after date, drawn by James Milne, son of the former, and brother of the latter.

The drawer indorsed it to Robert Brand. After his death, it was assigned by his representative to John Philip, who, in 1794, raised an action against the accepters for payment of it.

They stated in defence, that it had been accepted by them solely for the accommodation of the drawer; that it had been indorsed by him without value; and they pleaded prescription.

The Sheriff gave judgment against them, in respect that they did not allege payment.

In a suspension, the Lord Ordinary found that the bill was prescribed, and called on the charger to say, "Whether he would, in terms of the statute of limitations, undertake to prove resting and owing by the writ or oath of the debtor?" And on his refusing to do so, suspended the letters *simpliciter*.

Upon advising a petition, with answers, the Court were of opinion, that if Brand was an onerous indorsee, the charger was, in the circumstances stated in the defences, entitled to payment without further proof; but, before answer, (29th November 1797) remitted to the Lord Ordinary to inquire into the fact.

A proof was allowed, from which his Lordship (29th February 1799) held it established, that Brand was an onerous indorsee; and following up the opinion of the Court, found the letters orderly proceeded.

In a reclaiming petition, the suspenders contended, that as six years had elapsed without diligence or action on the bill, it was, in terms of 12th Geo. III. C. 72. at an end as a document of debt; and that therefore it was incumbent on the charger to prove a debt now subsisting against the accepters, which was not instructed by the defences.

The charger

Answered: That the right of an onerous indorsee could not be affected by the cause of granting the bill; and that the defenders having interposed their credit as cautioners for their near relation, though *ex facie* joint obligants with him, and not pretending that they had paid the bill, must still do so to the third party who had trusted to their security. See 19th November 1784, Robertson against Clarkson, No. 56. p. 13244.

The Court were not unanimous; but the general opinion was in favour of the charger, the bill being as much due now as on the day it was accepted, and it not being a relevant defence that it was originally granted without value.

The Lords adhered.

Lord Ordinary, *Monboddo*.

Alt. *W. Rae*.

*D. D.*

For the Charger, *John Clerk*.

Clerk, *Colquhoun*.

*Fac. Coll. No. 155. p. 349.*

No. 9.

An onerous indorsee is entitled to demand payment of a bill of exchange from the acceptor, after six years from the term of payment, altho' it was accepted solely for the accommodation of the drawer, the acceptor's subscription not being denied, nor payment alleged.