

No. 18. the drawer, because the bills had not been duly negotiated, not having been protested for several months after they fell due. In support of this objection, it was

Pleaded: Every bill constitutes a contract, whence reciprocal obligations arise. The holder of the bill, on his part, becomes bound in due time to present the same for acceptance; and, in case of dishonour, either by non-acceptance or non-payment, he is bound to protest the bill, and to notify the dishonour thereof, without any improper delay. In this way, his recourse is preserved against the drawer of the bill; but a neglect in any of these particulars, makes him forfeit this right: It is the acceptor and not the drawer who is the primary debtor. By not negotiating the law holds that he has relied entirely upon the acceptor, who, by his acceptance, has come under an obligation to pay the bills, whether he is possessed of effects of the drawer or not; Hart against Glasford, 21st June 1755, No. 148. p. 1580. Fairholms against Sun Fire Office, 23d June 1761, No. 155. p. 1588. Fergusson and Company against Belch, 17th June 1803, No. 13. *supra*.

Answered: Where a bill is accepted by a person, without being possessed of funds of the drawer when it becomes payable, when this bill is dishonoured, it is unnecessary for the indorsee to protest it, in order to preserve his recourse against the drawer, because no injury can arise from the omission of this ceremony, as the drawer must have been aware that this would be its fate. It is not even necessary to give any notice to him of the dishonour. This is the doctrine of the law of England; Cook's Bankrupt Law, p. 167. Bailey on Bills of Exchange, p. 17. Tindal v. Brown, 1. Term. Rep. p. 167. It is also the law of Scotland; Macalpine and Co. against Parsons, 21st January 1792, No. 176, p. 1617. The case is very different when the question is with an indorser; for he is, on all occasions, entitled to insist upon strict negotiation, as he has no concern whatever with the accounts between the drawer and the drawee.

The Court repelled the objection, and remitted the trustee to rank the debt.

In the case of Fergusson and Company, Belch was only an indorser, which distinguishes it from the present case.

For Petitioner, *Wolf-Murray*.
Agent, *C. Bremner*, W. S.

Agent, *Ja. Little*, W. S.

Alt. *Baird*.

F.

Fac. Coll. No. 211. p. 471.

1806. *November 18.*

FREER and ANOTHER against RICHARDSON and COMPANY.

No. 19.
A bill being
protested at
the instance of
the drawer,

JOHN DUNCAN, wright in Perth, and *David Gordon* at Mill of Cairnie, granted (17th April 1801) a joint bill to *Jean Duncan*, for £14. 10s. at one month's date.

The bill was protested 5th June, by Jean Duncan, and the protest recorded the same day.

David Freer, Writer to the Signet, (12th June 1801) used an arrestment in the hands of Gordon, in virtue of a depending action at his instance against Jean Duncan.

Jean Duncan having indorsed the bill for value, to John Richardson and Company, it was, 13th June, protested at their instance, recorded 15th, and a charge of horning given to Gordon on the 19th June.

Gordon suspended the charge, and raised a process of multiplepointing, in which Freer also appeared, pleading upon his arrestment. These processes were (26th November 1803) conjoined, and the Lord Ordinary (19th June 1804) "in the suspension, found the letters orderly proceeded; and in the multiplepointing, preferred the chargers John Richardson and Company, to the fund *in medio*." To which the Court (19th February 1806) adhered, by refusing a petition with answers.

Freer reclaimed, and

Pleaded: A bill of exchange which has been protested, and the protest recorded, loses its extraordinary privileges, and can only pass from hand to hand by assignation; Ersk. B. 3. Tit. 2. § 31. Since in this case the bill has merely been indorsed to the chargers, it has not yet been legally made over to them, and their whole subsequent procedure is consequently inept.

Answered: Bills pass by indorsation, as well after protest as before; Macadam against Macwilliam, 14th June 1787, No. 171. p. 1613. Besides, here there was nothing in the appearance of the bill which could make it known to the indorsees that it had been previously dishonoured; that any third party had an interest in it, or that its negotiability had been anywise impeded. All that they saw was, that it was past due.

The Court (18th November 1806) "adhered."

Lord Ordinary, *Glenlee*.
Alt. *W. Erskine*.

Act. *Hutcheson*.
Agent, *Jo. Cook*.

Agent, *D. Freer, W. S.*
Clerk, *Mackenzie*.

F.

Fac. Coll. No. 258. p. 579.

1807. June 16. STEPHENSON against STEPHENSON'S TRUSTEES.

WILLIAM STEPHENSON advanced a sum of money to his two sons, Joseph and Thomas, to purchase stock for their farms, and obtained from them a promissory-note for £892. 7s. 2½d. dated the 5th of January 1796, payable to him on demand, with interest.

No demand was made either for principal or interest during the life of Joseph and Thomas Stephenson; but after their death, William Stephenson raised an action against the trustees of Joseph, and the children of Thomas Stephenson,

No. 19.

and the protest recorded, but no marking of this made on the face of the bill, a creditor of the drawer uses an arrestment in the hands of the acceptor. The bill is indorsed subsequently for value, and the indorsees are preferred to the arrest-

No. 20.

In a bill payable on demand, prescription runs from its date.