

Objected, 1mo, The claim, in so far as it is founded upon the bills drawn by Macalpine and Company, cannot be supported, because they have not been duly negotiated.

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2do, It is equally groundless, in so far as it proceeds on the remaining bills. He who discounts a bill trusts solely to the credit of those whose names are upon it; and when the person receiving the money for the bill does not indorse it, this can only have happened from the discounters' not requiring his credit, and his wishing to keep himself free of the obligation of recourse; but, independently of the bills, there has been no legal evidence of the debt produced. Indeed, the nature of the transaction, which was a mere exchange of paper, does not admit of any separate claim, any more than if it had consisted in an exchange of goods, which might vary in their value, according to circumstances.

Answered, 1mo, It is a settled point in the law of England, where the bills in question were payable, that when the debtors in a bill become bankrupt, and claims are entered on their estates before the term of payment, negotiation is unnecessary, 21st January 1792, Creditors of Macalpine and Company against Parsons and Govett, No 176. p. 1617.

2do, Supposing no claim to lie on the bills themselves, as they were delivered in security merely, and not in extinction of the debt due to the claimants, it is competent to prove its amount *aliunde*, and sufficient evidence has already been produced.

THE LORD ORDINARY reported the cause on informations.

The COURT considered the first point to be completely settled in favour of the claimants, by the case of Parsons; and that, as to the second, although upon the general grounds stated for the trustee, no claim lay on the bills, the debt might be proved *aliunde*.

THE LORDS repelled the first objection; and, as to the second, moved by what was said as to a separate proof of the debt, they remitted to the Lord Ordinary to hear parties farther.

Lord Ordinary, *Henderland.* A&C. *John Clerk.* Alt. *Honyman.* Clerk, *Sinclair.*
Fol. Dic. v. 3. p. 89. Fac. Col. No 141. p. 324.

1795. June 20.

JAMES COWAN against WILLIAM KEY.

WILLIAM KEY, for value received, drew a bill in favour of Williamson and Haig, for L. 50 Sterling, on Nixon, Hunter, and Nixon of London, dated 10th March 1795, and payable 90 days after date.

The bill was afterwards indorsed by Williamson and Haig to Cowan and White, by them to James Cowan, and by him to Smith, Payne, and Smith, who, on the 28th April, presented it for acceptance, which being refused, they

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When a bill, payable a certain number of days after date, is protested for non-acceptance, the holder may raise summary

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protested it against Nixon, Hunter, and Nixon, for non-acceptance, and against the drawer and indorsers, for exchange, re-exchange, costs, &c. and immediately returned it, with the protest, to James Cowan, who, on the 23d May, gave Key, the drawer, a charge of horning upon it for payment.

A bill of suspension, presented for Key, having been refused, he, in a reclaiming petition,

Pleaded: Although the drawee should refuse to accept, the holder of the bill cannot have recourse against the drawer till it becomes due. It is not necessary, when a bill is made payable so many days after date, that it should be presented for acceptance; it is sufficient to present it for payment on the last day of grace; and, if not honoured then, to protest it for non-acceptance and non-payment, 28th June 1749, Jamieson against Gillespie, No 146. p. 1579. But if a protest, for non-acceptance, vested in the holder a right of such importance as that of immediate recourse against the drawer and indorsers, it would in all cases have been made indispensable.

Besides, when an obligation is made payable on a particular day, as in the present case, the day is held to be adjected in favour of the debtor, and the creditor cannot demand performance till it arrive.

Answered: The drawer of a bill undertakes that it shall be accepted whenever it is presented for that purpose; Bayley on Bills of Exchange, p. 11. If this, therefore, is refused, there is a failure in his obligation which subjects him to immediate recourse. Accordingly, where acceptance is refused, summary diligence, before the day of payment, is declared competent against the drawer and former indorsers; 1681, c. 20; 1772, c. 72. See also Forbes on Bills of Exchange, p. 177, and 178. The law of England, also, in this case, gives immediate recourse to the holder of the bill, Bayley, p. 42.; Lovelass on Bills of Exchange, p. 67.

THE LORDS were clearly of opinion, that the charge was authorized by the statutes 1681 and 1772, and unanimously 'adhered.'

Lord Ordinary, *Metbuen.*

For the Charger, *Cullen.*
Clerk, *Hume.*

Alt. W. Robertson.

R. Davidson.

Eol. Dic. v. 3. p. 84. Fac. Col. No 179. p. 425.

* * * For cases subsequent to the date of the above, on the subject of this section, see APPENDIX.