

No. 31. 1743, July 6, 29. RAMSAY *against* HOGG.

A BILL on London payable 40 days after date, not protested for not acceptance or not payment till the 44th day after date, being the day after the last day of grace, the question was, Whether that was due negotiation so as to give recourse against Hogg the indorser, especially that the last day of grace was not a post day to Scotland, but the next day was, when it was returned protested? The Lords found, that there being no protest on the day of payment, there lay no recourse.—29th July Unanimously adhered, and refused a bill.

No. 32. 1743, Nov. 8, 18. OCHTERLONY *against* HUNTER.

THE last interlocutor altered by President's casting vote, being seven to seven. For altering were Royston, Minto, Drummore, Strichen, Murkle, Leven, *et Ego*. For adhering were Justice-Clerk, Haining, Kilkerran, Dun, Balmerino, Monzie, and —. We repelled the defence that Hunter was bound only *dicis causa*, and as a name; *2do*, Repelled the defence of usury unanimously. The next point was upon the want of notification. The President seemed to think in the common case of a bill protested for not payment the defence would be good; but that one paying *supra* protest was not tied to such strict negotiation, and that it is incumbent on Mr Hunter to prove damages. I again humbly think that there was no difference as to the point of notice betwixt a bill protested by the creditor or indorser and one paying *supra* protest, and therefore that want of notice barred recourse, as we found lately in the case of William Hogg, unless the payer could prove no damage, as if the bill bore value in account. Kilkerran and Drummore were of the same opinion. Arniston had given his opinion yester day, that there was a difference betwixt a protest for not payment, and a payment *supra* protest as to the point of notification, and renewed the same opinion this day, but concluded that as punctual notice was necessary in this case as in any. In the reasoning, it cast up that several bills were drawn by Hunter the 14th of April, long after he might have notice of the bills paid *supra* protest on the 18th March. We all agreed that was a damage, and barred recourse as the bills paid on said 18th March. We first found it competent to Hunter to object the want of notice, though he should not be able to qualify and prove damage:—Found the notification sufficient as to the bills paid on the 18th May and 23d May, but not for any of the bills formerly paid, and found that there is no notice of the bills thereafter paid: But found, that the not notifying the dishonour of the bills paid 18th March does not bar the recourse for the bills drawn by Hunter the 14th April, (the reason was, that by that very omission Hunter is freed from all those bills paid 18th March to much greater extent.) Thursday 9th, we repelled the defence on the pursuer's taking the obligation 1735. Repelled also the defence on the bond 1736, in respect of the docquet of the same date allowing the bills to be retained till Hunter should sign that bond. Delayed till Wednesday the 16th, the question as to the bond 1737, that Ochterlony may explain what papers or accounts passed betwixt them to apply this debt to such bills. Repelled the defence on the L.4500. Delayed the defence as to the L.1200 balance said to be due Mr Murray the 18th March. Sustained the defence as to the three bills last mentioned, where the writing on the back is signed by Ochterlony, and so cancelled as not to be legible.