

1788. July 2. GEORGE CHARLES *against* JAMES SKIRVING, and Others.

No 172.

A bill of exchange cannot be protested against the acceptor on the day of payment.

GEORGE CHARLES obtained from a debtor of his, a bill of exchange, payable one day after date; and, on the day of payment, the debtor being confessedly unable to pay, he took a protest against him for not payment, and thereupon used arrestments, the validity of which was afterwards called in question by James Skirving and the other creditors of the bankrupt.

THE LORDS seemed to be of opinion, that if the protest had been taken on the day after, though within the days of grace, it would have been sufficiently regular. But this not being the case,

'THE LORDS sustained the objection to the arrestment, that the bill of exchange on which it was founded, was protested on the same day on which it became due.'

Lord Ordinary, *Hailer*. Aft. *Cha. Brown*. Alt. *Maconochie*. Clerk, *Home*.  
*Craigie*. *Fol. Dic. v. 3. p. 84. Fac. Col. No 27. p. 44.*

1790. May 23. ROBERT CARRICK *against* HENRY-WILLIAM HARPER.

No 173.

Although, on account of circumstances, the dishonour of a promissory note was not intimated by one indorser to another, till the 19th day; the Court found recourse was not lost, there being no negligence or unnecessary delay.

HUMPHRY KER granted a promissory note for L. 217: 11s. to Henry-William Harper, or order, payable in London three months after date.

This note Harper indorsed to Robert Carrick at Glasgow, who indorsed it to Walker, one of the agents or riders of Thomas Johnstone, merchant in Manchester. By Walker it was indorsed to Johnstone his employer, from whom it came by another indorsation into the hands of Joseph Jones and Company in London.

On the last day of grace, the note was protested for non-payment by Joseph Jones and Company, and within three days after, the dishonour was intimated to Johnstone at Manchester. Walker, Johnstone's rider, being at this time from home, Johnstone, owing to his ignorance of the address of Carrick, the preceding indorser, did not give any intimation till the 14th day after the date of the protest; a letter for Carrick being then put into the post-office. Carrick received this letter on the 19th day after the date of the protest, and he immediately gave notice to Harper, to whom the note had been originally granted.

The contents of the note having been paid by Johnstone to Joseph Jones and Company, and by Carrick to Johnstone, the question arose, whether Harper was obliged to relieve Carrick from the loss.

*Pleaded* for Harper: Viewing the promissory note in the light of a foreign bill of exchange, as all documents conceived in this form, and neither payable nor dated in Scotland, ought to be, it cannot now be the foundation of any legal claim, unless against the particular indorser to whom intimation of the dishonour was given within three posts after the date of the protest; Erskine, b. 3. tit. 2. § 33.; 14th February 1781, Elliot *contra* Bell, (No 167. p. 1606.)