

mentioned in the decree of the House of Lords, “ which
 “ the sea makes upon the coast *at high water*,” is the line
 which the sea forms at high water on the land surrounding
 this bay. The two heads or forelands, which constitute the
 entrance to the bay or haven, and upon which the marks ap-
 pointed by the Court of Session to be set, are visibly nothing
 more than sand-banks, liable to daily variation from the
 operations of the sea and river. Such a line necessarily ex-
 tends the respondents’ fishing not only *into*, but to the ut-
 most verge of the bay and haven, so as to exclude the
 appellant from fishing therein, and thus has deprived him
 of the most valuable part of his fishing.

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Pleaded for the Respondents :—The line fixed by the
 House of Lords in 1728, was a line across the river Spey,
 which the sea makes upon the coast, as it flows in upon the
 land. That this line was the boundary of the two fishings;
 and in so far as the appellant’s right was concerned, it meant
 the general line of outer coast next the sea, and not that
 line which goes round *within* the bay. That the Duke of
 Gordon’s limits were the “ *Littora Maris*.” That the *Ostium*
fluminis did not, and could not, comprehend the space from
 the Potty and Linn burns downwards to the sea, but only
that without the bay; and, therefore, the Court of Session
 were warranted in ordering the fixed landmarks to be set
 up on the two headlands, at each side of the mouth or en-
 trance to the haven.

After hearing counsel, it was

Ordered and adjudged that the interlocutors complained
 of be affirmed.

For Appellants, *Thos. Miller, Al. Wedderburn.*

For Respondents, *C. Yorke, Al. Forrester.*

Unreported in Court of Session.

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 M. 1592.

JAMES GROSETT, son and executor-dative of
 Walter Grossett of Logie, Esq., deceased,
 formerly Inspector-General of His Majes-
 ty’s Customs in Scotland, - - } *Appellant* :

Sir JAMES MURRAY, Receiver-General of the
 Customs in Scotland, - - } *Respondent.*

House of Lords, 17th March 1763.

BILL—NEGOTIATION.—Held a party (a public officer) to whom a

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bill was indorsed in security of the customs, was bound, on the bill falling due, duly to negotiate it, and payment not being recovered in consequence of his neglect to do so: Held him liable in the contents.

THE Collectors of revenue and customs are required to render quarterly accounts to Exchequer, and, in making their remittances, they must state to what branches of the revenue the sum remitted is to be applied; but when that cannot at the time be ascertained, or when a collector is removed from his office, the practice is, to remit cash or bills to the Receiver-general, to lie as a deposit until that be ascertained.

On the removal of Walter Grosett, who was Collector-general of Customs at Alloa, to a higher sphere of duty, a balance remained in his hands, due by him, to the amount of £205. 6s.; and in payment of which he transmitted a bill, signed by James Drummond, merchant, as acceptor, Nov. 6, 1747. drawn in favour of himself, and indorsed to the Receiver-general, and payable at Candlemas then next, and bearing to be indorsed for value, being *his Majesty's money*. This bill was sent with the following note:—

“ Sir,—Enclosed I send you Mr. James Drummond’s acceptance, of 6th Nov. 1747, for £205. 6s., to lie as a deposit till applied.” To which there was the following answer:—“ Sir,—Having received from you the sum of £205. 6s. by Mr. James Drummond’s acceptance of the 6th Nov. 1747, the same, when paid, shall lie as a deposit, as your letter of the 7th ult. has directed, until applied.”

Sometime thereafter, and before the bill fell due, Mr. Grosett gave directions for the application of £92. 3s. 9½d. of this sum. When the £205. 6s. bill fell due at Candlemas 1748, no demand was made by the Receiver-general for payment against Drummond, the acceptor, and the first demand for payment made against him was on 2d August 1748, six months after the bill became due, when, and not before, it was protested for non-payment, and no notice was given of this protest to Grosett, the indorser, for five months thereafter, when the acceptor, Drummond, had become bankrupt. Action was then raised for payment of the bill by Grosett, who, in the meantime, was compelled to account to the Exchequer for the amount, against the Receiver-general, on account of his neglect duly to negotiate the bill, by which the contents thereof were lost. Defence stated by the Receiver-general. That he was only chargeable with the

money he actually received, and was not bound to accept of bills from the Collectors of customs; and that when he did accept of those out of the ordinary course, he was not bound to strict negotiation. After a proof of the respective averments of parties, the Lords sustained the defence, and assoilzied the defender from the conclusions of the action; but found no expenses due.

Against this interlocutor an appeal was brought to the House of Lords.

Pleaded for the Appellant.—That, by the law and custom of merchants relating to bills of exchange, the holder of any bill is bound to use all legal diligence, when the bill falls due, for the recovery of its contents, in case of non-payment; and was, therefore, bound to due negotiation. The respondent, in the present case, ought to have caused the bill to be protested, and the usual notice thereof to be given to the indorser; which not having been done, he by his failure in so doing, makes, and has made, the bill his own. The defence, that bills were not the legal payment for sums recovered by the Collector of customs was untenable; and is disposed of by the fact, that this practice of payment has been long in use, and was actually sanctioned, and formed a part of the Collector's instructions. Besides, the Receiver-general had acquiesced in such mode of payment; and he could not have come to any possible loss by such arrangement, if he had duly negotiated the bill in question.

Pleaded for the Respondent:—The Collectors of customs are ordered “to pay to the Receiver-general, the monies from time to time received by them, describing upon what particular branches of the revenue such monies are received;”—That the Commissioners of Customs have allowed the Collectors, by the 4th article of their instructions, to remit their receipts “to the Receiver-general, by good bills of exchange,” but it was never agreed, nor any way arranged, that the Receiver-general was to undertake any risk to the prejudice of the revenue; or to run any hazard by this method of remittance; and the present case must stand on a different footing altogether from a bill of exchange indorsed and remitted by one merchant to another, for value in the course of trade. In such a case, due negotiation was necessary, but no such obligation devolved on the Receiver-general, who is accountable only for the actual money he receives, and to his Majesty. *Seperatim.* Where a debtor, for his own convenience, sends his creditor a bill, to be applied when paid, in discharge of his debt, it never was held, that

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the creditor is bound to a strict negotiation, because the creditor is entitled to payment from his debtor directly, without subjecting his right to the contingency of insolvency. The present case was still stronger, because Grossett was not debtor to the Receiver-general, but to the King.

After hearing counsel, it was

Ordered and adjudged that the interlocutor complained of in the said appeal be, and the same is hereby reversed; and it is further ordained, that the respondent is liable to the appellant, as representative of his father, deceased, for the sum of £205. 6s., lost by the insolvency of James Drummond, the acceptor of the bill of exchange in question, but is not liable to any interest on account thereof.

Note.—This decision alters the rule decided in *Alexander v. Cumming*, that a bill indorsed in security does not require due negotiation. Vide M. 1582.

LADY DOWAGER FORBES	-	-	<i>Appellant ;</i>
LORD JAMES FORBES	-	-	<i>Respondent.</i>

House of Lords, 29th January 1765.

REDUCTION—ERROR IN ESSENTIALS OF AGREEMENT—LIFERENTER'S POWERS AND LIABILITIES—BONA FIDE CONSUMPTION.—Where the husband and wife, by marriage articles, conveyed the estate to themselves, and the survivor of them, for the wife's liferent use allenary, reserving power to grant provision to daughters to the extent of £3000, and failing the husband exercising this power to the wife: Held, (1st,) That though the husband had granted provisions to his daughters in exercise of this faculty, to the extent only of £2000, that the wife was entitled, after his death, to execute an additional bond to the extent of £1000. (2nd), That where the liferentrix had entered into agreements restricting her liferent rights, through error in essentials, that she was still entitled to claim her rights as originally settled. (3d), That *bona fide percepti et consumpti* was not pleadable, and the respondent accountable, for the whole rents, feu-duties, and casualties since the date when her right accrued, reversing the judgment of the Court of Session: But, (4th), That she was liable for the interest of the heritable debts on Puttachie and Pittendrieck.

For the first branch of this case, which was remitted back from the House of Lords to discuss the remaining points, *vide ante*, p. 36.