

BERRY and  
SANDERSON  
v.  
BALFOUR.

the other defenders, conjunctly and severally,  
liable in L. 100 damages.

*Forsyth and Jameson, for the Pursuer.*

*Boswell, for Scott.*

*J. A. Murray and Ivory, for the other Defenders.*

(Agents, *Martin & Stevenson, w. s.* and *Alex. Burns, w. s.*)

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PRESENT,

LORD CHIEF COMMISSIONER.

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1822.  
July 16.

BERRY and SANDERSON v. BALFOUR.

A protest on a  
bill of exchange  
found to be reg-  
ularly taken.

AN action of reduction and improbation to  
have a protest upon a bill of exchange set  
aside.

ISSUES.

“ Whether the bill in process, dated Edin-  
“ burgh, 11th January 1819, for the sum of  
“ L. 385, 18s. 1d., drawn by the pursuers,  
“ and accepted by Alexander Elder and Com-  
“ pany, was not protested for non-payment on  
“ the 14th day of April 1819, by James Lun-  
“ din Cooper, notary-public in Kirkcaldy, in  
“ the usual place of business of the said Elder  
“ and Company, at Kirkcaldy, or in the per-

“sonal presence of George Elder, a partner of  
 “the said company; and in presence of Tho-  
 “mas Meldrum, and Robert Beatson, both  
 “writers in Kirkcaldy?”

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The second was a question as to the practice of holding, that a bill noted by a notary for non-payment is equivalent to a protest.

*More*, for the pursuers, stated—The 14th April was the last day of grace, and we will prove that the notary did not protest it till the 23d. The real question is, Whether any act was done upon the 14th by the notary, or any one authorized by him, which entitled him to certify his having protested it on that day?

On the second issue he referred to Chitty and Bell, to show that the protest must be by a notary.

Chitty, 279.  
 II. Bell's Law  
 Dict. 640.  
 II. Bell, Com.  
 260, (3d edit.)  
 Ibid. I. 324 and  
 325, (4th edit.)


*Jeffrey*, for the defender.—This is an action to set aside an apparently regular protest and noting, which is a written instrument of the highest credit; and to set it aside would require overwhelming evidence, and here there is merely the *non memini* of a single witness.

One witness is not sufficient, especially to cut down a regular deed.

Frank v. Frank,  
 March 3, 1795.  
 M. 16824.

LORD CHIEF COMMISSIONER.—It is a great

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comfort in a serious question of this nature, to have the assistance of such gentlemen as I now see in the box, as I am satisfied that they will, from their knowledge of business, supply any defect that may occur.

It is clear, that a protest on a bill of exchange is as solemn an act as can be done, and it has been well said that it is semijudicial.

Notaries are appointed with much solemnity, their deeds bear credence, and must stand till cut down upon clear evidence. In this case I am not prepared to say that there is no evidence, but the question will be, Whether it is sufficient to cut down this protest ?

This question is entirely on the first issue, and if you are of opinion, from the evidence, that the bill was not regularly protested, you will find in terms of the issue.

The best method here will be to consider the case proposed to be made out, and then the case that has been made out.

Mr More states the question here to be, at *what time* this bill was protested ; but his evidence goes to show, that there was no protest. The three witnesses called, merely state however, that they do not recollect the protest having been taken ; but this is for your consideration, and you will say, whether you consi-

der it sufficient to undo such a solemn instrument ; to me it appears extremely unadvisable, on the evidence of non-recollection, to impeach such a document. But if you, from better knowledge of business, and habit of judging of testimony, are of a different opinion, you will find so.

HALLIDAY  
v.  
RULE.

Verdict—“ Find on the first issue for the  
“ defender, that the bill was regularly protest-  
“ ed.”

*Moncreiff and More, for the Pursuers.*

*G. J. Bell and Jeffrey, for the Defender.*

*(Macmillan & Grant, w. s. and James Donaldson, s. s. c.)*

PRESENT,

LORD CHIEF COMMISSIONER.

HALLIDAY v. RULE.

1822  
July 16.

**T**HIS was a suspension, turned into a reduction, of a charge upon a bill of exchange, upon an allegation of forgery.

The pursuer having promised to pay a bill, which, in the opinion of engravers, was not subscribed by him, the Jury found for the defender.

ISSUES.

“ Whether the name of John Halliday, sub-