

1783.

[M. 1610.]

Messrs. HODGSON & DONALDSON, Merchants, } *Appellants* ;  
 London, - - - - - }  
 THOMAS BUSHBY of Ardwell, - - - *Respondent*.

HODGSON, &c.  
 v.  
 BUSHBY.

House of Lords, 12th May 1783.

**BILL—NOTICE OF DISHONOUR.**—Where the holder of a dishonoured bill makes diligent inquiry at the former residence of the holder and indorser, for the purpose of intimating the dishonour, but cannot find him, and does all in his power to intimate dishonour to him, the recourse is not lost against him.

A bill was drawn by the respondent, dated London, 3d June 1779, for the sum of £454. 2s., payable two months after date, on Benjamin Graham, merchant, London, acceptor per procuracy of John Hodgson, and indorsed by the drawer (respondent) to the appellants.

When the bill fell due it was not paid by Graham the acceptor, and was in consequence protested. And on inquiry at Jermyn street, where the appellants were informed Mr. Bushby, the drawer, resided, for the purpose of notifying to him the dishonour of the bill, they could learn nothing of him, other than that he had left the place some time before the bill fell due. They inquired at Mr. Hodgson, the party who signed per procuracy of Graham the acceptor, but the information from him was, that he could not say whether he was then in town, in the country, or in Scotland.

Aug. 6.

Hodgson, on the 11th August, paid for Graham the acceptor £100, in part payment, but did not communicate, or declined to communicate, where the respondent was to be found. Eight days after the bill fell due, it was communicated to the appellants that the respondent had retired to Dumfriesshire, where he had a small estate, whereupon the bill was sent to their agent in Edinburgh, who raised diligence upon it, and brought an adjudication against the estate. The defence set up was, that the appellants were barred from recourse on the bill, 1st. In respect they had not notified the dishonour to him within three posts; and, 2d. In respect of giving delay to the acceptor and taking partial payment from him.

Aug. 11.

Of this date, the Lord Ordinary repelled the defence Feb. 17, 1781. pleaded by the said Thomas Bushby, and adjudged, decern-

1783. ed and declared, in terms of the libel; and to this interlocutor, on reclaiming petition, the Court adhered.  
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 HODGSON, &c. On second reclaiming petition the Court found, “ that no  
 v. “ recourse lies against the defender, as drawer and indorser  
 BUSHBY. “ of the bill,” and a further petition against this judgment  
 July 3, 1781. was refused.  
 July 19, 1781.  
 Dec. 3, 1782. Against these last interlocutors the present appeal was brought.

*Pleaded for the Appellants.*—The bill was regularly negotiated. The bill fell due on 6th August 1779, and was on that day regularly protested for non-payment, at the house of Mr. Graham the acceptor, which was the place of the actual residence of the respondent, and the appellants immediately made inquiry at Jermyn Street, where they had been informed the respondent resided, in order to notify the dishonour to him, and failing finding him, they made every inquiry and diligent search in order to notify the dishonour. Having done this, and the respondent having not left any information where he was to be found, recourse still lay upon the bill against the drawer and indorser, the more especially, as when they did learn, eight days after the protest, that he had retired to Scotland, they immediately sent the bill and protest to Scotland, to raise diligence against him there. In these circumstances, the respondent having done every thing in his power to notify the bill, that in law is held sufficient, it must be held as duly negotiated. Besides, this is an inland bill, in regard to which it is established law, that the drawer and indorser of such a bill is bound to the holder in all circumstances, and the want of protest, or due negotiation, cannot destroy this recourse.

*Pleaded for the Respondent.*—That the bill here was not duly negotiated. It lay, after being protested, in the appellants’ hands for some time, without any notification, and even without any inquiry, and when they did receive some cue to the respondent’s residence, they did not even then intimate the dishonour until the 21st of August, a term far beyond that to which the time of notice of dishonour is limited.

After hearing counsel,

LORD MANSFIELD,

“ My Lords,—“ A holder of a bill must give notice of the dishonour to the drawer or indorsers, within a reasonable time; but what was a reasonable time depended upon a multitude of circumstances. In the present case, the holders had done every thing incumbent on them. They had reason to hold Bushby, by his leaving London

without providing for the payment of the bill, and leaving no notice where he was to be found, to be a fugitive bankrupt, or swindler. The single question was, Whether, on hearing he was somewhere about Dumfries, they should have sent a letter to that place, or if they did right in writing to Edinburgh? As he lived at a distance from Dumfries, they had reason to think the notice would reach him by writing to Edinburgh as soon as by trusting to the postmaster of Dumfries forwarding a letter. It was impossible to say they had not been as diligent as the circumstances of the case permitted. They were certainly obliged to use all diligence, as every holder of a dishonoured bill is, to give notice to the drawer or indorser."

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"As to the second defence. "If the holder of a dishonoured bill gives an hour's delay to the acceptor, he liberates the indorser; but in this case, the bill was regularly protested; and taking the partial payment some days after, was as much for the benefit of the drawer as the holder. The doctrine, that accepting a partial payment from the acceptor at any time *ipso facto*, frees the indorser, is neither founded on law nor reason. I therefore move a reversal of the judgment in this case."

It was ordered and adjudged that the interlocutor complained of be reversed; and the interlocutor of the Lord Ordinary and of the Court of 3d July 1781 be affirmed.

For Appellants, *L. Kenyon, Henry Dundas.*

For Respondents, *Ilay Campbell, J. Anstruther.*

VOLKERT HENDRICKS, late Master of the Ship Katherine of Amsterdam, and PETER WIL- LEM VAN LANKERN of Amsterdam, Merchant, and the Owners of the said Ship Katherine and her Cargo,	}	<i>Appellants;</i>
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WM. CUNNINGHAM, Merchant, Glasgow,	Respondent.
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House of Lords, 2d May 1783.

CAPTURE — JURISDICTION. — Circumstances in which held that a Dutch vessel, while coming from a French colony, with the produce of that island to Amsterdam, was held to have been illegally captured as a neutral, neither the vessel nor the cargo, nor her papers, shewing that she was an adopted French vessel. Opinion indicated, though the objection to the competency was waived, that the Admiralty Court of Scotland had no jurisdiction to try such a question, but that it belonged to the High Admiralty Court of England.

The appellants were natives of Holland, and their ship,