

Ward Chipman Junr Esq

THE

Weekly



Chronicle.

Vol. XXXIX.

FRIDAY, MARCH 12, 1824.

No. 2014.

HALIFAX, NOVA-SCOTIA:—PUBLISHED BY WILLIAM MINN'S, BARRINGTON STREET, OPPOSITE THE SOUTH-EAST CORNER OF THE DALHOUSIE COLLEGE.

J. MANSFIELD & SON, HAVE received from LONDON, LIVERPOOL, and GREENOCK, their usual supply of FALL GOODS; consisting of superfine, second and common Cloths; Flannels; Bombazines; rose and point blankets; Flannels; Bombazines; Camblet for gentlemen's Cloaks; printed Cottons; Homespuns; Checks, Irish linens; Cambric, book and jaconet Muslins; Imitation Cambric; Cotton and Linen Bedtick; Candlewick; Duck, Osnaburgh, Brown Hollands; a variety of Shawls and Hdkfs, good East India INDIGO. &c. They have also on hand, Boxes Tin, Sheet Iron, Iron and brass Wire; a variety of SLOP CLOTHING; with many other articles which they offer for sale at a small advance. Oct. 3.

The Subscriber,

Has received by the Industry from LONDON, A Supply of Barclay & Co's best BROWN STOUT; which may be had in bottle or wood, at his Wine Cellar.—ALSO, West India and London Particular Madeira; Old Port; pale old Sherry; Dry Lisbon, and other WINES—Cognac Brandy; High flavor'd old Rum; Gin, Irish Whiskey, &c &c.

FROM CANADA,

A large assortment of Single and Double STOVES; with various other Castings, on Consignment.—which, with his usual assortment of Ironmongery Cutlery, &c. are for sale, at moderate prices. Oct. 17. 1823. GEO. N. RUSSELL.

NEW AUCTION MART, AND COMMISSION STORE.

THE Subscriber begs to inform his Friends and the Public, that he has rented the STORE lately occupied by Joseph Hamilton, head of BAUERS (late RUDOLFS) Wharf, where he intends transacting business in the

GENERAL COMMISSION LINE;

And the Sale of Goods by Auction. Intending to confine himself solely to the Commission Business, he assures his Friends that no exertions shall be wanted to give such satisfaction as may merit a continuance of favours.

A part of the Store is fitting up in a neat manner or Dry Goods, to which every attention will be given to keep them in good order.

West India produce, and other heavy Goods storage free. Regular days of Sale at the Room, will be on Tuesdays, Thursdays and Saturdays, at 11 o'clock precisely. B. HACKETT. Halifax, Sept. 5, 1823.

William Deblois & Co.

Have received, per RANGER, from LIVERPOOL,

AN assortment of BOOK, CAMBRIC, JACONET, and other MUSLINS; Ladies' Robes & Dresses—a variety of NAPS, for cloaks & mantles; Steam Loom and Striped Shirting Cottons; Checks, Carpetings, &c.—which will be sold very low for cash. Sept. 12.

BOGGS & HARTSHORNE

Have received by the late arrivals from England their SPRING IMPORTATION, comprising

A GENERAL assortment of IRONMONGERY, CUTLERY and HARDWARE, Bar and Bolt IRON, Gun Powder, Shot, Window Glass, Paints, Oil &c.—They have for sale, a consignment of

LONDON PARTICULAR MADEIRA, BRONTE, and PORT WINES: Also, Grenada, RUM, entitled to the long drawback and Irish Oat-Meal and shell'd Barley. May '8.

Notice.

ALL persons having any demands against the Estate of the late JOHN MINTYRE M'COLLA, of Windsor, deceased, are requested to render their accounts, duly attested, to the Subscriber on or before the twenty first of June next; and all persons indebted to said Estate, are requested to make immediate payment to

HARRIET M'COLLA, Administratrix.

May 30, 1823.

Notice.

ALL persons having demands against the Estate of Mr. JOHN ANDERSON, late of Chester, County of Lunenburg deceased, are requested to exhibit them, duly attested, to the subscribers, within eighteen months from this date; and all persons indebted to said Estate, are desired to make immediate payment to

GEORGE TANNER, } Executors. ALEX. M'DONALD, }

July 25.

Notice.

ALL persons having demands against the Estate of the late JASPER HARDING, yeoman, of Little Port le Bear, deceased, are hereby requested to send in their accounts, duly attested, within eighteen calendar months from this date; and all persons indebted to said Estate, are requested to make immediate payment to

JAMES HARDING, Administrator.

Little Port le Bear, } Sept. 8, 1823.

INDENTURES.

For Sale at this Office.

MONTREAL, Feb. 6. COURT OF KING'S BENCH.

BILL OF EXCHANGE.

John Armour et al. vs. John Brown. This was an action brought by John Armour and Robert Shedden, formerly merchants trading under the firm of Armour and Shedden, against the Defendant for non-payment of a Bill of Exchange, purchased by them of William Peddie, on which the defendant was previous indorser, which was protested in London for non acceptance.—Counsel for Plaintiffs Mr. Walker, for Defendant Mr. Beaubien. The Council for Plts. opened the case, by stating that F. S. Whitaker and Comp. of Kingston purchased the Bill in question in that place, and transmitted it to the Def't, who subsequently sold it to Wm. Peddie and Co. indorsing it. In the month of Jan. 1823, the latter house sold it through the medium of a Broker, to the Plaintiffs, who transmitted it to their Agents in Glasgow. In due time the Bill was presented to the drawee in London for acceptance, who refusing to accept it for want of effects in his hands belonging to the drawer, it was protested by the holders in London. In the month of May ensuing the defendant was duly noticed of the protest. The Council then proceeded to examine evidence on the case.

Alexander Miller examined by Council for Plt.—He was in the employment of Mr. Peddie in 1822, and was in Scotland in the spring of that year. On or about the 29th of March he met Mr. Shedden, one of the Plts, in Glasgow, who stated to witness that the Bill of Exchange in question had been protested in London on the 21st March, for non acceptance, and that, in consequence of that circumstance he was in immediate want of money, and requested £100. He gave Mr. Shedden the money, remarking that the Bill would be settled by the house in Montreal. He did not see either the protest or the Bill in the possession of Mr. Shedden. He sailed from Greenock the next day, and Mr. Shedden sailed shortly after. Witness arrived at Quebec in May, and Mr. Shedden arrived two days after. They came from Quebec to Montreal in the same Steam Boat, and arrived on Sunday evening. On Monday Mr. Shedden informed Mr. Peddie of the protest of the Bill, and witness thinks that Mr. P. personally notified the defendant of the protest of the Bill; and that the defendant had advanced as a reason for not retiring the Bill, that it was protested for non acceptance, and not for non-payment. Mr. Peddie received afterwards a letter (which was read by Council) from Mr. Reeves, Book keeper to the defendant, stating that the Bill could not be retired until it had been protested for non-payment. Witness left Montreal for Quebec, shortly after, and could say no more with regard to the Bill, as he did not return until the 1st of September.—Cross examined by Mr. Beaubien.—To question whether Mr. Shedden could not have given witness earlier notice of the protest?—Did not think he could; as witness had been travelling through different parts of Britain.

Q.—Were there not regular stages from London to Liverpool? Ans.—Yes, every day in the week except Sundays.—Q.—Are there not regular packets from Liverpool to New York? Ans.—Yes, four times a month.—Q.—And would not a letter from London have reached Montreal sooner by the way of Liverpool and New York than by Glasgow and Quebec?—Ans.—It probably might.—Q.—Was not the Liverpool and New York route the most customary for Mercantile communications?—Ans.—It was the usual route, & except by the Halifax Packets, the only one in the winter.—Q.—Did witness conceive that Mr. Shedden had used due diligence in giving him the notice of the protest at Glasgow on the 29th March?—Ans.—He did not consider the information as a regular notice. He took it as merely a casual statement; and the £100 was a mere loan. He did not see the protest.—Q.—Did Mr. Peddie go to the def't's with the protest on Monday after the arrival in Montreal? Ans.—He was informed that he did.—The Counsel for the Plts, then put a few questions to witness.

Shaw Armour examined.—He was in the employment of Armour and Shedden in January 1822. Mr. Shedden was then in Scotland. Witness purchased a Bill of Exchange of R. Armour, E-q. endorsed by John Brown, and Wm. Peddie and Co. The Bill was immediately transmitted to Mr. Shedden in Glasgow. In the Month of May ensuing Mr. Shedden

arrived at Montreal, and witness was informed that the Bill had been protested. Mr. Shedden and Mr. Peddie, he was told, had called on defendant with the protest, and that defendant objected that the Bill had not been protested for non payment. Sometime after the defendant proposed sending the Bill and protest to Mr. Whitaker in Kingston, and witness carried the Bill in the month of June to the office of defendant, and left it in his possession for the purpose of its being sent to Mr. Whitaker. Witness called frequently after, and asked the defendant if he had heard from Mr. W.; but received evasive answers.

He often after wrote to a friend in Kingston, requesting him to call on Mr. Whitaker on the subject of the Bill. Subsequently witness received a letter from that person, stating that he had called as requested on Mr. W. who answered that he had not seen the bill, and did not know that it had been protested. In the month of August witness called on defendant and requested an order on Mr. Whitaker or the Bill. The order was given and witness sent it to the Agent of Armour and Shedden in Kingston, requesting him to present it. Afterwards witnesses received the Bill through the Agent at Kingston.

Adam L. M'Nider, Esq. examined by Mr. Beaubien.—Testified in a corresponding manner with Mr. Miller with regard to the regular course of the Packets from Liverpool to New York, and the advantage of sending letters from Britain to Montreal by that route.

The Council for the defendant then addressed the Jury. He recapitulated much of the evidence; but confined himself chiefly to that part which argued a want of due diligence on the part of the pliff's, in not giving timely notice to the defendant of the protest of the Bill of exchange. He said that the Bill was protested on the 21st day of March; that on the 30th Mr. Shedden had the Protest and Bill in his possession at Glasgow. The testimony of Mr. Miller substantiated this fact; Mr. Shedden sailed a few days after for Quebec, where he arrived about the middle of May. At Quebec he remained five days, and then came to Montreal by Steam Boat, where he arrived on Sunday. On Monday, the hearsay evidence of Mr. Miller informs us, that the plaintiff Mr. Peddie, called on Mr. Brown with the Protest.—The learned gentleman cited many passages from Chitty on Bills to show that immediate notice is requisite from the holders of a Bill, to indorsers of it of the non acceptance of the same.

He stated that formerly it was the duty of the drawer of a Bill to prove that he had sustained damage by the failure of the holder to give him notice of the dishonor of a bill; but latter authorities have established that damage is presumed by that failure, and the only excuse allowed in that case was the proof of the want of effects in the hands of the drawer. It is asserted by Chitty, that if the "Drawer of a Bill from the time of drawing to the time when it was due had no effects in the hands of the drawer or acceptor, then he is *primae facie* not intitled to notice of the dishonor of that Bill."—But further the same author declares that "it is no excuse for not giving notice to the indorsers of a Bill, that the acceptor had no effects or the drawer."—But even in such a case notice must be given or the holder by not doing so, discharges the drawer and indorser from liability. The learned gentleman made some further quotations to shew that notice should be given by post, or in the common way of communication. In view of all these arguments he said that immediate notice was required, and he should proceed to show that this requisition had not been complied with by the plaintiff in this case. He had already shewn that from the 21st to the 30th of March the protest had slumbered in the possession of the holder; that no letter had been dispatched; that no exertion had been made to inform the person upon whom the holder had recourse,

* The evidence only stated one day. "If an acceptance be refused, notice should immediately be given to the persons to whom the holder means to resort for payment, or they will generally be totally discharged; and it is not sufficient for the holder to wait till the time mentioned in the Bill, for payment has elapsed, and then to give notice of non-acceptance as well as of non-payment. The reason why the law requires the holder to give due notice of non-acceptance by the drawee is, that the drawer may withdraw forthwith out of the hands of the drawee, such effects as he may happen to have, or may stop those which he is in a course of putting into his hands, and that the indorser may respectively take the necessary measures to obtain payment from the parties respectively liable to them; and if notice be not given it is a presumption of law, that the drawer and indorser are prejudiced by the omission; and it is on this principle that notice of non-acceptance and non-payment are required."—Chitty page, 197.

of the dishonor of the Bill;—He had kept the protest with him during his voyage, and during his five days' stay in Quebec, where he had never thought of forwarding the intelligence by post. It had been proved in evidence that the most direct mode of communication from London to Montreal, was by the way of Liverpool and New York; that packets between these ports sail four times a month; and that this is considered the common conveyance of intelligence. These facts must have been known to Mr. Shedden; but they were neglected, therefore proper diligence was not used by him to convey to the indorser of the Bill, the notice which the Law requires. He said that nothing but proof of want of effects in the hands of the drawee, could excuse the holder in not giving the notice to the drawer, and even that had not been proved to be the case, which was a strong argument in favor of the indorser. That due diligence had not been used by the holder of the Bill, he thought had been sufficiently proved; and when the jury took into consideration, the anxiety every man must feel, in putting his hand to paper of this nature, that it should not be dishonored, he could not but feel a strong conviction that they would render a verdict for the defendant.

Thomas A. Turner, Esq. examined by Mr. Beaubien.—The evidence of this gentleman substantiated, that in similar instances, where a Bill of exchange in Great Britain was refused acceptance by the drawee, it had often been paid on a future presentment when the Bill had become due. That the want of effects at the time of presentment for acceptance was not evidence that the Bill would not be paid at the expiry of the sight; as the means destined to meet the bill might not have reached the drawee at the time of its non acceptance.

The Council for the plaintiff, addressed the Jury.—He said that in opposing his learned friend, he should reverse the order of the argument. He should endeavour to define what the diligence required by law was; and to shew that when proper means are used by the holder of a Bill, to convey the necessary intelligence to the drawer or endorser, they are sufficient in the eye of the law and in the estimation of reason. Transactions of this kind generally occurred among merchants whose multifarious concerns must equally share in their attention. That the requisite diligence in a case of this nature should imply an immediate sitting aside of all other concerns for making the communication to the indorser or drawer of a Bill, of its non-acceptance, was preposterous. The term *due diligence* be conceived was strained too far in this case by his learned opponent. The protest had been presented to the endorser in a time very little, if any, later than it would have been received by the Liverpool packets via New York, and he thought the plea of want of proper notice untenable. The learned Gentleman made extracts from Lord Eilenborough and Lord Mansfield, to support his arguments with regard to the diligence required.

To drop however, the point in dispute—to admit that due diligence had not been exercised, the most important portion of the fact is by no means disposed of. It was not so much the propriety of his clients' conduct in giving notice to the indorser upon which he stood—altho' he contended, that it was satisfactory to the demands of the Law—as upon subsequent circumstances. After all the alleged delay, the protest did arrive, and was presented to Mr. Brown, and what said that gentleman? He did not complain that satisfactory diligence had not been used in giving him notice of the protest. He complained that the Bill was not protested for non-payment; but immediately advanced propositions for having that affected. He thus acknowledged the validity of the plaintiff's claim, and waived any right that he might have had to refuse payment because of neglect or want of diligence. The letter of Mr. Brown's confidential Clerk had been read, and no want of diligence was advanced in it as the cause of non-payment by Mr. Brown; he only complained that the Bill had not been protested for non-payment. Mr. Brown had done more than this; he had taken the Bill and protest in question, under the design of sending it to Mr. Whitaker, at Kingston—but where had it remained for three months? In the hands of Mr. Brown. The plaintiff at the end of that time caused inquiries to be made of Mr. W. for the Bill. To this the answer of Mr. Whitaker was conclusive that he had never heard that the Bill was protested. Does not this look like assuming the payment of the Bill?—When this case was argued last year, the plea of want of notice was not thought of.—It was now brought up as a new feature