

No 133.

1724. June 20.

M'LEOD *against* GORDON.

A BILL was indorsed for value after diligence had been done upon it.—THE LORDS denied recourse against the indorser, on this ground, That the indorsee had not followed out their diligence, nor intimated that they could not recover payment. It was here found, that a blank summons was not sufficient intimation. See The particulars, *voce* DILIGENCE.

Fol. Dic. v. 3. p. 88. Edgar, p. 52.

1727. February 16.

FERGUSSON of Auchinblain *against* MR QUINTIN MALCOLM.

No 134.
A bill, payable at a certain day, need not be presented by the porteur for acceptance, before the day of payment.

A BILL was drawn in the Isle of Man, 25th May 1720, by Mr Quintin Malcolm, upon John Fergusson, merchant in Ayr, for the sum of L. 73 Sterling, payable to Mr William Flood, merchant in Dublin, on the 1st September thereafter, at the house of Mr Davie, merchant in Dublin; and farther bearing, 'to state the same to account as *per* advice.' This bill, by indorsation, coming into the person of Auchinblain, he insisted in a recourse against Malcolm the drawer; the bill, upon its falling due, having been regularly protested for non-payment against John Fergusson, upon whom it was drawn.

The defence was, That John Fergusson was broke with the drawer's effects in his hands; and the possessor could have no recourse against the drawer, in that he had not done sufficient diligence; particularly, that he did not present the bill, to be accepted by John Fergusson, having never applied to him before the day of payment. And the defender urged in the general, That it is an indispensable duty in every sort of bills, to offer them to be accepted, and in case of non-acceptance, to protest. And he endeavoured to make it appear, that he suffered by this neglect; for if John Fergusson had accepted, there would have been ready access against him, immediately after the day of payment, to make the bill effectual: If he refused to accept, the drawer, being duly advertised, would have taken care to draw his effects out of his hands.

On the other hand, it was *pleaded, 1mo*, Where a bill is drawn, 'as *per* advice,' payable at a day certain, it is the drawer's business to give advice of the draught; because, wherever that clause is, the person on whom the bill is drawn, is neither bound to accept nor pay, unless advice be given. The possessor then of such a bill reasonably supposes, that he, to whom the bill is directed, is acquainted of the draught, in order to his making provision for payment: And as the drawer, and person drawn upon, are understood to be in a correspondence, the possessor is likewise, in reason, to suppose, that the drawer will be advised by his own correspondent, on whom he drew, whether the bill is to be honoured or not. *2do*, It was *pleaded*, That it would make no alteration, suppose the clause *per advice*, had not been in the bill, which was made out from consideration of bills payable on or some time after sight; in which the possessor may lengthen