

No 147.

A bill did not arrive till after the term of payment had elapsed. No protest was taken for dishonour, nor intimation given for many months. Yet recourse was found still competent.

1749. June 29. WILLIAM YOUNG *against* GEORGE FORBES.

COLIN CAMPBELL being employed by the Society at London for Propagating the Gospel in foreign parts, as a preacher in Philadelphia, drew a bill upon their treasurer, 26th June 1747, for L. 30 Sterling, payable thirty days after date, to Alexander Forbes merchant in Philadelphia, who indorsed and sent it to William Young, merchant in Aberdeen; and he, 17th August, indorsed it to George Forbes, merchant there, taking his bill for the value.

George Forbes sent the bill to London, where it was dishonoured; but took no protest, nor informed the indorser before the 4th of October.

William Young charged George Forbes on the bill granted by him, who suspended upon the recourse competent to him on the dishonoured bill; which he was not bound to protest, being indorsed long after it fell due.

THE LORD ORDINARY, 8th November 1748, found, That the bill indorsed by the suspender to the charger, as value of the bill charged on, was not duly negotiated; and therefore that there lay no recourse thereon.

On a bill and answers, the LORDS remitted to merchants to report their opinions, which were, that no protest was necessary. But authorities were cited from Japhrae's Treatise of Monies and Exchange; Molloy, b. 2. c. 10. § 27.; and Hay's Negotiator's Magazine, § 33. that when bills do not arrive before the time they fall due, payment ought to be made immediately, and a protest taken, if it is not made; to which it was said, that by these authorities the duty of protesting lay on the indorser, to whose hands, as he alleged, the bill came after it fell due, not on the indorsee who purchased after that time.

THE LORDS, 16th June, found that recourse was competent; and refused a bill and adhered.

A^{ct}. Lockhart. Alt. Burnet. Clerk, Gibson.

Fol. Dic. v. 3. p. 84. D. Falconer, v. 2. No 76. p. 81.

No 148.

A bill was not presented for acceptance, till after the expiry of the days of grace. Although the drawee had no funds belonging to the drawer, recourse was denied.

1755. June 21.

JOHN HART, Merchant in Warrington, *against* JAMES GLASSFORD, Merchant in Glasgow.

WARNOCK, merchant in Glasgow, drew a bill upon Smith, merchant in London, bearing value in his hands, and payable forty days after date, to Glassford, or order.

Glassford indorsed this bill to Hart for value: Before the bill became due Warnock died, being at that time, as was contended, insolvent. The bill, after various indorsations, was, on the third day after the day of payment, indorsed

at Liverpool to Barclay, merchant in London: Barclay, without delay, demanded payment from Smith; and, on his refusal to pay, took a protest in common form. It appeared, from an affidavit afterwards made by Smith, that he did not refuse payment because the bill was over-due, but because he had not value in his hands.

No 148.

Hart, the first indorsee, upon intimation of dishonour, retired the bill, and insisted in recourse against Glasford, the first indorser.

Pleaded for Glasford: The bill not having been presented for acceptance till after the expiry of the days of grace, was not duly negotiated; and therefore, by the custom of merchants, and the decisions of this Court, no recourse can be allowed.

Pleaded for Hart: Regular negotiation is required in bills, that the drawer may be thereby warned against trusting the intended acceptor, who has refused to obey his mandate, or because the neglect of the proteur may prejudice the drawer: These reasons apply not to the present case; for Warnock the drawer had no money in the hands of Smith, nor afterwards remitted any to him. Neither could Glasford suffer any damage from the neglect of negotiation; he may still affect the estate of Warnock in common with the other creditors of Warnock; and had the bill been duly negotiated, he could not have had any preference: As, therefore, the neglect of negotiation could not possibly affect the interests of the parties concerned, recourse is still due to the proteur.

‘ THE LORDS found no recourse due.’

For Hart, *Sir D. Dalrymple.*

Alt. Lockhart.

Fol. Dic. v. 3. p. 84. Fac. Col. No 154. p. 229.

1757. June 24. MESSRS HAWKINS and Co. *against* JOHN COCHRAN.

In a process, for recourse against the drawer for a bill of exchange, it appeared that the bill was protested within the days of grace for not payment, and that due notice was given of the dishonour of the bill. The defence insisted on was, That the bill was not returned to the drawer till 39 days after it was dishonoured.—It was answered, That the indorsee who protests the bill for not payment, is not bound to part with his security to the drawer more than to the acceptor. Nor is it sufficient to say, that the indorsee ought, in equity, to return the bill and protest to a correspondent, in order to be delivered up upon receiving payment; for the holder of a bill is not bound to have a correspondent in the place where the drawer lives. Were that necessary, a correspondent would be also necessary in the different places where the indorsers live.

No 149.
The proteur of recourse is not obliged to return the bill and protest to the drawer, until he receive payment.