No 177. his banking houſe, and go to the country, he ought to commit his buſineſs to a reſponſible perſon, empowered to open his letters, and tranſmit ſuch as require diſpatch. On the part of Meſſrs Orrs, it was attempted to be ſhown, that no injury had in fact ariſen from the delay, as the bill, though it had been notified on the 27th as diſhonoured, could not have arrived at Briſtol before Wright and Beavis had committed an act of bankruptcy. The COURT thought it unneceſſary to inveſtigate that circumſtance. It was enough that an undue delay of three days was clearly inſtructed; and on that medium they decerned for repetition againſt Meſſrs Orrs. *See* APPENDIX.

Fol. Dic. v. 3. *p.* 87.

1794. *February* 21. REID and Co. *againſt* COATS.

No 178.

IN this caſe, which was ultimately decided in the Houſe of Lords, it was held, in conformity with Murray againſt Groſſet, No 156. p. 1592. that a bill indorſed in ſecurity requires negotiation. *See* This caſe in Synopſis.

Fol. Dic. v. 3. *p.* 89.

1794. *December* 9.

WILLIAM and JOHN HARRISONS, *againſt* EDWARD CHIPPENDALE, Truſtee on the ſequeſtrated Eſtate of Macalpine and Company.

No 179.
Found, that when a debtor in a bill becomes a bankrupt, and a claim is made for it on his eſtate before the term of payment, the want of due negotiation cannot be objected by his creditors.

When a bill has paſſed through the hands of a perſon who is neither drawer, acceptor, nor indorſer of it, no recourſe lies againſt him, if it be afterwards diſhonoured.

WILLIAM and JOHN HARRISONS, and Macalpine and Company, had been accuſtomed to accommodate each other by a mutual exchange of bills.

The latter became bankrupt in May 1788, and at that time bills to a large amount were in the circle, accepted by the Harriſons, and which they were afterwards obliged to diſcharge.

The Harriſons had in their poſſeſſion, at the time of the failure, bills to the ſame amount delivered to them by Macalpine and Company, by whom ſome of them were drawn, but others were neither drawn, accepted, nor indorſed by them. The debtors in all theſe bills had become bankrupt, and claims had been lodged on their eſtates before the terms of payment.

The Harriſons entered a claim on theſe bills on the ſequeſtrated eſtate of Macalpine and Company, and produced, in ſupport of it, on the one hand, the bills they themſelves had accepted, retired; and, on the other, the bills they had got from Macalpine and Company, diſhonoured; an account-current atteſted by Macalpine, after his bankruptcy; and a copy of certain proceedings in the Court of Chancery, relating to theſe bills, in conſequence of a claim entered for them on the Engliſh eſtates of the bankrupts. They alſo referred to the mutual books of the parties.

The truſtee on Macalpine and Company's eſtate

No 179.

Objected, 1*mo*, The claim, in ſo far as it is founded upon the bills drawn by Macalpine and Company, cannot be ſupported, becauſe they have not been duly negotiated.

2*do*, It is equally groundleſs, in ſo far as it proceeds on the remaining bills. He who diſcounts a bill truſts ſolely to the credit of thoſe whoſe names are upon it; and when the perſon receiving the money for the bill does not indorſe it, this can only have happened from the diſcounter's not requiring his credit, and his wiſhing to keep himſelf free of the obligation of recourſe; but, independently of the bills, there has been no legal evidence of the debt produced. Indeed, the nature of the tranſaction, which was a mere exchange of paper, does not admit of any ſeparate claim, any more than if it had conſiſted in an exchange of goods, which might vary in their value, according to circumſtances.

Answered, 1*mo*, It is a ſettled point in the law of England, where the bills in queſtion were payable, that when the debtors in a bill become bankrupt, and claims are entered on their eſtates before the term of payment, negotiation is unneceſſary, 21ſt January 1792, Creditors of Macalpine and Company againſt Parſons and Govett, No 176. p. 1617.

2*do*, Suppoſing no claim to lie on the bills themſelves, as they were delivered in ſecurity merely, and not in extinction of the debt due to the claimants, it is competent to prove its amount *aliunde*, and ſufficient evidence has already been produced.

THE LORD ORDINARY reported the cauſe on informations.

The COURT conſidered the firſt point to be completely ſettled in favour of the claimants, by the caſe of Parſons; and that, as to the ſecond, although upon the general grounds ſtated for the truſtee, no claim lay on the bills, the debt might be proved *aliunde*.

THE LORDS repelled the firſt objection; and, as to the ſecond, moved by what was ſaid as to a ſeparate proof of the debt, they remitted to the Lord Ordinary to hear parties farther.

Lord Ordinary, *Henderland*. Act. *John Clerk*. Alt. *Honyman*. Clerk, *Sinclair*.
Fol. Dic. v. 3. *p.* 89. *Fac. Col. No* 141. *p.* 324.

1795. *June* 20. JAMES COWAN *againſt* WILLIAM KEY.

No 180.
When a bill, payable a certain number of days after date, is proteſted for non-acceptance, the holder may raiſe ſummary

WILLIAM KEY, for value received, drew a bill in favour of Williamſon and Haig, for L. 50 Sterling, on Nixon, Hunter, and Nixon of London, dated 10th March 1795, and payable 90 days after date.

The bill was afterwards indorſed by Williamſon and Haig to Cowan and White, by them to James Cowan, and by him to Smith, Payne, and Smith, who, on the 28th April, preſented it for acceptance, which being refuſed, they