

No. 14. The Court adhered, (15th June.)

The obligation of cautionry is not affected by the failure duly to negotiate, provided always that no prejudice arises from the omission. But if any of the indorsers previous to Cuthbert had been solvent, and not obligants in the bond of caution, and recourse had been lost against them, this might be a difficult question.

There was no occasion to determine relative to the due negotiation; but it was understood, that by the practice of merchants the 2d August was the last day of grace.

Lord Ordinary, *Meadowbank*.
For Smith and Son, *Hay*.
Agent, *Jo. Hanton*.

For Jarron, *Baird*.
Agent, *Tho. Duncan*.
Clerk, *Home*.

Agent, *James Young*.
For Cuthbert, *Gillies*.

F.

Fac. Coll. No. 112. p. 246.

No. 15.

1804. *May 16.* ARMSTRONG *against* JOHNSTONE.

A bill of exchange, when prescribed, cannot authorise summary execution, though the debtor's oath afterward prove the debt.

* * * This case is No. 338. p. 11140. *voce* PRESCRIPTION.

1804. *June 21.* BOWACK, Petitioner.

No. 16.

A bill is valid, though written on a stamp of a higher denomination than required by statute.

AN action was brought before the Sheriff of Kincardineshire against James Bowack, tenant in Pitskelly, upon a bill for £100, dated 17th March 1802. Among other defences, he pleaded, that the bill is written upon an improper stamp; instead of one denoting a duty of 2s. a bill stamp denoting 3s. having been made use of; and reference was made to 37th Geo. III. C. 136. which begins thus, "Whereas, deeds or other instruments cannot be given in evidence, nor are in any manner of way available, unless stamped with the proper stamp provided for such purpose; and whereas," &c.

After referring to a bill, &c. wrote on a stamp of higher value or different denomination than required, the 5th section says: "And be it further enacted, That if any such bill of exchange, promissory-note, or other note or order, shall be produced to the said commissioners before the same shall be payable, according to the tenor and effect thereof, the same all be stamped on payment of said duty, and with a penalty of 40s.; but in case such bill, &c. shall be payable, according to the tenor and effect thereof, before the production thereof (as in the case here) to the said commissioners for the purposes be-