

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-

“fore mentioned, then the same shall not be stamped, unless on payment of No. 16.  
“the duty, and the sum of £10. of penalty.”

The petitioner maintained that the bill was null, and that it could not be used in judgment. The interpretation here contended for is strictly adhered to by the English courts; *Chamberlain v. Porter*, 11th May 1804.

The Sheriff (15th February 1804) decerned in terms of the libel.

The Lord Ordinary (28th April 1804) refused a bill of advocation, when advised with answers and replies.

To which judgment, the Court (21st June) adhered, by refusing a petition.

The Court considered the enactment of the stamp laws to be solely for the purpose of raising a revenue, and that there was no view of introducing new solemnities in the execution of writings; and, therefore, provided the revenue be not injured, a stamp may be used of any value the granter chooses. It was observed, that the English case referred to, was not similar to the present, the bill having in that case been written not on a bill stamp, but a *receipt stamp*, the duties on which might be differently appropriated; see *Termly Reports*, 22d June 1782, Taylor.

Lord Ordinary, *Polkemet.*  
Agent, *Pat. Orr*, W. S.

For Petitioner, *Irvine.*  
Clerk, *Menzies.*

F.

*Fac. Coll. No. 168. p. 381.*

1804. June 28.

OGILVIE, against Moss.

AMONG the papers of William Marshall, late assistant cashier to the Dundee Banking Company, there was found a bill in these terms: “£425. Dundee, 28th January 1802. Three months after date, pay to me or my order, Four hundred and twenty-five pounds Sterling, at the town-clerk’s office here, being for value delivered you.  
W. H. Moss.

No. 17.  
A bill found effectual, although the name of the drawer was left blank.

“To W. H. Moss, Esq.”	}	£425
“presently residing at		10
“Theatre, Greenock.”		20
		15
“due		£470.”

The name of the drawer was not affixed to the bill, but it was blank indorsed by Marshall, who, by means of the situation he occupied in the bank, had been in the use of accommodating persons with money upon bills, promissory-notes, and other securities.

Before this bill became due, the affairs of Marshall went into disorder, and he left Scotland. His estate was sequestrated, and John Ogilvie, writer in Dundee, was appointed trustee of the bankrupt subject. In that character, he