

ledged the smaller sum was included, and had prorogated the term for paying the said last bill, beyond the term at which the first bill was payable; and found he had thereby lost his action of recourse; therefore assolizied the defender.'

Lord Ordinary, *Grange.* Aft. *Pet. Wedderburn.* Alt. *Jas. Fergusson.*

Fol. Dic. v. 1. p. 101. Session Papers in Advocates' Library.

No 136.

1731. Jan. Feb.

M'KENZIE against URQUHART.

GEORGE M'KENZIE of Inchcoulter brought an action for recourse against George Urquhart, merchant in Cromarty, as drawer of the following bill:—
 'Cromarty, 24th April 1727. Upon the 11th November next, pay to John Earl of Cromarty, or order, *within your dwelling house*, L. 100 Sterling, value received of his Lordship; which place to account with (signed) GEORGE URQUHART.' Addressed; Colonel Urquhart of Newhall; and accepted by him; indorsed by the Earl of Cromarty to the pursuer.

The defender *alleged* that the bill had not been duly negotiated. It was not protested till several days after the last day of grace; and the protest bore, not that payment had been demanded in *the acceptor's house*, in terms of the bill, but only *in Cromarty*, a large village: And no notification had been given, until about a year after the protest, when the acceptor had become bankrupt.

The pursuer *contended*, That strict negotiation is not requisite in inland bills: That it is not necessary, in a protest, to specify the precise spot where payment is demanded, especially in an inconsiderable village; and that proof could be brought, that although notification of the dishonour had not been made by the porteur himself, yet the drawer had been informed by a third party.

It was found, that the bill was not duly negotiated; that the porteurs of inland bills are subject to the necessity of rigorous negotiation, equally with the porteurs of foreign bills; and that it was irrelevant to state that the drawer had heard of the dishonour of the bill, by means of third parties, since he was to rely upon notification only from the porteur himself, or his order; therefore recourse was lost.

It was afterwards *urged* for the pursuer, That admitting the bill had not been duly negotiated, still recourse was competent, if the drawer could not show, that he had effects in the acceptor's hands: For in that case, *nihil illi deerat*.

THE LORDS found it was incumbent on the drawer, to prove he had effects in the acceptor's hands at the time of the draught.

There were cited, as authorities in support of this judgment, a decision in the *Journal de Palais*, quoted by Forbes; Yule against Richardson, Fountainhall, v. 2. p. 64. *voce* SUMMAR DILIGENCE; and Coupar against Stewart, Div. 5. *b. t.*

Aft. *Boswell, Areskine.* Alt. *Hay, Graham, Grant.*

Fol. Dic. v. 1. p. 100. & 101. Session Papers in Advocates' Library.

No 137.

Inland bills require strict negotiation, as well as foreign ones.

Recourse is not lost, if the drawer had no effects in the acceptor's hands.