

The Company received punctual payment of Cuming's one acceptance, and of the other bills indorsed, excepting James Cuming's bill above mentioned. It became due in March 1754; but the acceptor being by that time in a state of bankruptcy, the Company did not strictly negotiate it, trusting to the indorser for their payment, in respect of the conception of the above doquet. In June 1754, they protested the bill, and raised horning and caption upon it.

James Cuming's effects not being sufficient to pay above eighteen pence in the pound of his debts, the Ropery Company brought an action before the High Court of Admiralty, against Robert Cuming, for payment of the contents of the said bill.

Cuming, in his defence, *alleged*, That the bill was indorsed *in solutum* of the account; and not having been duly protested for not payment, recourse was not competent against him.—The pursuers, on the other hand, *maintained*, That by the doquet of the account, it appeared, the bill was only indorsed *in security* of the debt; and therefore there was no need for exact negotiation to entitle them to recourse.

The Judge found the defender liable in the contents of the bill, with interest from the citation.

Cuming, in a bill of advocacy, *pleaded*, That it would be of the most dangerous consequence, to overlook a point so essential to commerce, as the exact negotiation of bills, and to sustain an action of recourse upon bills not duly negotiated.

*Answered* for the pursuers, The words of the doquet, *which, when paid*, clearly imply, that the bill was not taken in payment, but only in security *pro tanto* of the debt. An assignee in security is not bound to do diligence; neither can an indorsee in security be so bound. Where a bill is indorsed in payment, or for present value, recourse can only be had upon exact negotiation; because the indorser is no otherwise bound than by the indorsation: But where an indorsation of a bill is given *in security* of a former debt, or on condition, that, *when paid*, it shall operate a discharge of it, the indorsation is no more than a corroborative right. The indorsee is only obliged to apply the payment *when made*; and if the bill is not paid, the indorser is still liable in the original ground of debt.

'THE LORDS refused the bill of advocacy.' See Murray against Grossett, *infra, b. t.*

Reporter, *Strichen*:

A&C. *Rae*.

Alt. *Montgomery*.

*Rae*.

*Fol. Dic. v. 3. p. 89. Fac. Col. No 82. p. 145.*

1758. July 12.

WILLIAM TOD against PATRICK MAXWELL, Merchant in Dundee.

UPON the 25th March 1757, Maxwell drew a bill upon Butter and Crawford at London, for L. 50, payable 24th April 1757, directing the money to be placed to his account. This bill was indorsed to William Tod, and duly accepted.

No 151.  
Recourse refused on a bill protested on the day after the last

No 151.  
day of grace,  
though no  
damage could  
be said to arise  
by delaying  
the protest.

The bill was protested on Thursday the 28th April 1757 for not payment, and notice sent by that night's post of the dishonour. An action for recourse was afterwards brought against Maxwell.

*Pleaded* in defence, The bill ought to have been protested on the 27th April, the last of the three days of grace; and therefore was not duly negotiated.

*Answered, 1mo,* Maxwell cannot object to the negotiation of the bill, without proving, that Butter and Crawford were his debtors at the time the bill was presented, the contrary of which was presumable from the last words of the bill; and the only evidence produced by Maxwell, is an account dated four months before, by which a balance is due to him of L. 100 : 16 : 6.

*2do,* Maxwell suffered no damage by the delay of the protest; for it is offered to be proved, that Butter and Crawford had stopped payment on Monday the 25th of April; and that no bills protested against them either on the Monday or Tuesday were recovered.

*3tio,* As Wednesday the 27th, the last day of grace, was not a post-night to Scotland, and advice was given of the dishonour by the Thursday's post, Maxwell was therefore acquainted, that payment had been refused, as soon as if the protest had been taken on Wednesday; and therefore could not pretend, that any damage had been occasioned by the want of due negotiation.

' THE LORDS refused recourse upon this bill, and found expences due.'

*N. B.* In this case it was admitted, that bills drawn from Scotland upon London, have not the privilege of four days of grace; and that the decision observed by Mr Falconer, 29th January 1751, Cruikshanks against Mitchell, (p. 1578.) is wrong marked, the interlocutor there recited having been finally altered.

*Asst. Johnston.*

*Alt. Macintosh.*

*Johnston.*

*Fol. Dic. v. 3. p. 84. Fac. Col. No 123. p. 228.*

1759. November 21. WILLIAM ANDREW against ANDREW SYME and Co.

No 152.  
A bill drawn  
at so many  
days sight,  
need not be  
transmitted  
immediately  
for accept-  
ance.  
*See Falls a-  
gainst Poter-  
field, infra.*

ANDREW SYME and Co. merchants in Glasgow, did, 5th May 1755, draw a bill upon John and Robert Dunlops, merchants in Rotterdam, for 600 guilders, payable at 21 days sight, to Thomas Hopkirk or order. William Andrew, ship-master in Crawford's Dyke, to whom this bill was indorsed for value, presented the same for acceptance, 19th June 1755, and it was accepted accordingly. But the Dunlops having become bankrupt before the term of payment, William Andrew the indorsee insisted in a process of recourse against the drawers. They put their defence upon the want of due negotiation, *insisting*, That, by the course of the post the bill might have been presented three or four weeks sooner than was done, in which case it would have been payable, and probably paid, before