

It was admitted, that the dishonour was notified in due time to Mr Nisbet. The note and protest being returned; Messrs Coutts brought a process against Mr Nisbet for payment.

No 153.

Pleaded for the defender, Though the dishonour of the note was properly notified, yet the note itself, and the protest, were not transmitted to Scotland, or presented to the defender for payment, till a month after the date of the protest: That in all such cases, not only must the dishonour of the bill be timeously intimated to the indorser, but the bill itself must be immediately transmitted, and payment demanded; and that this is the opinion of merchants who have been consulted upon the question: That in the present case, Leitch was now become bankrupt; and, if the note had been timeously transmitted, payment might have been recovered from him.

Pleaded for the pursuer, As this note was payable in England, and passed by indorsation through several hands in that country, it must be regulated by the law of England; and by the statute *quo. & como Guliel. cap. 17.* joined with the act 3d and 4th of Queen Anne, cap. 9. it is sufficient, that due notice be given of the dishonour within fourteen days. Neither of these acts require, that the note itself, or protest, should be transmitted within any limited time. Besides, it is impossible, that the holder of the note can transmit the only document he has for the debt, until he has received payment.

THE LORDS found the defenders liable in payment of the contents of the note, with expences.

Avt. Miller.

Avt. Lockhart.

Clerk, Home.

P. Murray.

Fol. Dic. v. 3. p. 88. Fac. Col. No 262. p. 488.

1761. June 13.

MESSRS. ALEXANDER BROWN and SON, Merchants in Edinburgh, *against*
MATTHEW CRAWFURD, Merchant in Glasgow.

Mrs EDIE of Perth had been in use to furnish Matthew Crawford with linen yarn, for which he sometimes paid money, and sometimes sent her bills on Edinburgh or London. In May 1758, he sent her, indorsed, a promissory note of one David Leitch, in the following terms: 'Glasgow, 11th May 1758. Forty-six days after date, I promise to pay to the order of Mr Matthew Crawford, the sum of L. 25 Sterling, at the house of Malcolm Hamilton and Company, merchants in London, for value received.'

This note Mrs Edie put into the hands of Messrs Brown the pursuers, who sent it to their correspondent at London, and he did not protest it for not payment till seven days after the days of grace were expired; but immediately thereafter gave notice of the dishonour to the pursuers, who intimated the same in course to Mr Crawford.

No 154.

Found, that the negotiation of a promissory note, payable in England, must be regulated by the law of England.

No 154.

The pursuers, in right of Mrs Edie, brought a process against Mr Crawford for payment of an account due by him to her. He insisted that credit should be given him for the sum contained in this promissory note; because, as it was not duly negotiated, there could be no recourse against him for it.

Pleaded for the pursuers: That the note was properly negotiated, and that all had been done that was incumbent on any person to do, to whom a promissory note drawn in Scotland is indorsed; and as the matter falls to be tried by the law of Scotland, there could be no doubt; because, by that law, no negotiation, properly, is required on promissory notes.

It is indeed true, that, by c. 9. 3tio et 4to Annæ, promissory notes are put on the same footing with inland bills of exchange; but then, it is as true, that only such inland bills are privileged as are drawn in England or Wales; as, therefore, promissory notes can be in no better condition than inland bills, it follows of consequence, that unless they be drawn in England, they have none of the privileges of inland bills; nor is the porreur obliged to use the form of negotiation.

Pleaded for the defender: That as the promissory note is payable in London, so it seems to follow of consequence, that the question of negotiation falls to be judged of by the law of England. Indorsees, in taking indorsements, are tacitly understood to contract, that they will follow the custom of the country where the payment is to be made, in demanding payment, and doing every thing else necessary to entitle them to recourse. But it is very clear, that by the statute of Queen Anne, promissory notes in England require the same negotiation as bills; and it is as clear, that such negotiation was not made in the present case.

THE COURT was of opinion, that the promissory note was not properly negotiated; and therefore 'sustained the defence.'

Aft. Burnet.

Alt. Montgomery.

Clerk, Kirkpatrick.

Fol. Dic. v. 3. p. 88. Fac. Col. No 32. p. 61.

1761. June 23.

Messrs FAIRHOLMS, &c. Merchants in Edinburgh, *against* The SUN-FIRE-OFFICE at London, and JOHN PUGET.

No 155.

If the dishonour of a bill is not duly notified, recourse is not competent, altho' the bill be timeously protested for not payment, and although the person

THE Earl of Rothes was debtor to Captain Wilson of London, merchant, in four bonds, to the extent of L. 8,840 Sterling. One of them had been assigned by the Captain, in the 1748, to Claud Johnston, merchant in London; other two, in September 1750, to Alexander Hamilton, solicitor in London, as trustee for the Sun-Fire-Office; and the fourth bond, being for L. 1900 Sterling, was assigned in February thereafter to John Puget. These assignments were concealed from the Earl of Rothes.