

No 163.

horning in such a case; and, therefore, the charger must be referred to his action at common-law.

The bill was ordered to passed on juratory caution, because it was offered, otherwise would have been passed simply without caution. *See* SUMMAR DILLIGENCE.

A&C. *W. Baillie.*Alt. *Al. Miller.*

Clerk, ———.

*Fac. Col. No 196. p. 132.*

No 164.

A bill was indorsed after the term of payment was past. Recourse was found competent, though the ordinary rules of negotiation could not be applied.

1777. *February 27.*COOPER *against* CLARK.

COOPER applied to Clark for the loan of L. 100, and Clark, instead of cash, indorsed him a bill to that amount, due to him by Wann and Watson, but of which the term of payment was past, the bill being due 19th December 1793, and the indorsation given 4th January 1774. Clark, in return, granted his own bill, payable at six months, for L. 102 : 10s. thus including the interest. Wann and Watson being unable to pay, Cooper protested the bill against them, and against Clark for recourse; who being sued, presented a bill of suspension. Clark, in the mean time, indorsed Cooper's bill to Maclintock, merely as a trustee; and he suing for payment against Cooper, the latter presented a bill of suspension; and both being conjoined, came to be discussed together. It was urged for Clark, That though recourse is competent against the drawer or indorser, where the indorsation is made before the bill is payable, it is otherwise where the indorsation is made after the term of payment is past, for the bill has then lost its privileges; for, what is the meaning of recourse being preserved by a protest taken within the days of grace, if a protest taken long after their expiry, and after the bill had become due, were to have the same effect? *Answered,* The forfeiture, of recourse, in ordinary cases, is the just consequence of the negligence of the holder of a bill, in not taking early and timeous measures for obtaining payment; which negligence is imputable, if a protest is not taken within the days of grace: but, in the present case, the indorsee had no opportunity of taking such timeous measures; for the term of payment was past before he got right to the bill.

THE LORDS found recourse competent to Cooper against Clark, on Wann and Watson's bill; and therefore, in the first suspension; found the letters orderly proceeded, and sustained the said claim of recourse in compensation of the bill granted by Cooper to Clark, and indorsed to Maclintock; and found Cooper and Maclintock jointly liable in expences. *See* APPENDIX.

*Fol. Dic. v. 3. p. 85.*