No 174.

There is an obvious diſtinction between the drawer and indorſers of an accommodation bill: The former receiving the money, has no right to relief from any one; but if an indorſer ſhall pay, he has right to operate relief againſt both the drawer and previous indorſers. This intereſt is the criterion by which to judge whether ſtrict negotiation is neceſſary or not.

Some of the Judges doubted whether a bill indorſed, in order only to give it credit, that it might be diſcounted by the drawer, and which did not at all paſs *in commercio* from indorſer to indorſer, was entitled to the privileges of negotiation. Such indorſers, it was argued, were never cautioners. Some thought accommodation bills proceeded *e turpi cauſa*. Others were of opinion, there was no turpitude in ſuch bills. Solvent parties, it was ſaid, might fairly raiſe money in this way; and being able to repay it, they did no wrong.

THE COURT refuſed the petition, and aſſoilzied the indorſer.

Ordinary, *Lord Henderland.* Act. *R. H. Cay.* Alt. *R. Corbet.* Clerk, *Mitchelſon.*

See Session Papers in Signet Hall.

1791. IRVINE *againſt* ——.

No 175.
An indorſer found liable in recourſe, who had certain private knowledge of the diſhonour, although no regular notification.

An action of recourſe was brought againſt the indorſer of a bill. No regular intimation of the diſhonour had been given; yet, from private knowledge, the indorſer could not be ignorant of the diſhonour. THE LORD ORDINARY found him liable; which the Court confirmed, and found expences due.

Obſerved on the Bench: When an indorſer hears nothing of a bill for ſome time after the term of payment, he is entitled to preſume it is paid: hence, in general, without intimation, an indorſer cannot be made liable; but, in the preſent caſe, the parties ſaw each other every day, and the whole circumſtances come to be equivalent to regular intimation. The indorſer knew, from circumſtances, that the bill was diſhonoured. In particular, he was preſent when the acceptor made a partial payment.

The defender was on the poors roll; but this was conſidered as no reaſon for preventing a decree againſt him for expences. *See* POOR.

(No Printed Papers.)

1792. *January* 21.

CREDITORS of MACALPINE and Company *againſt* PARSONS and GOVETT.

No 176.
Regular negotiation not required in accommodation-bills.

THOMAS JEFFREY of London accepted a bill drawn on him by Macalpine and Company of Perth. It was afterwards indorſed ſucceſſively to three different parties in England, the laſt of whom were Parſons and Govett.

No 176.
Bills drawn on perſons in England are regulated by the Engliſh law.

Macalpine and Company having become bankrupt, it was, in a competition among their creditors, *objected* againſt the claim of Parſons and Govett, that by the failure of regularly negotiating the bill, which, though due 27th June, was not proteſted for non-payment till 16th July, recourſe againſt the drawers was cut off. At the ſame time it was admitted, firſt, that the acceptor was not poſſeſſed of any of the drawers funds; and next, that before the term of payment, the acceptor and the other indorſers, as well as the drawers, were all bankrupt. Commiſſions of bankrupt too had iſſued againſt them all, Macalpine and Company having an eſtate in England; ſo that before the bill was payable, the acceptor's bankruptcy had been announced in the Gazette; and, within the days of grace, the bill was proved againſt ſome of the indorſers, and againſt the drawers. In ſupport of the objection, it was

Pleaded: It is a rule reſulting from the nature and object of bills of exchange, that they ſhould be negotiated with the ſtricteſt adherence to the eſtabliſhed regulations. No reaſoning concerning equipollencies is to be admitted, nor is any room to be left on this head for doubt or conjecture.

Hence, in all caſes, without exception, accepted bills, if diſhonoured, ought to be regularly proteſted, and the diſhonour to be notified in due time. For it is not ſufficient to allege, either that the acceptor held no effects belonging to the drawer, or that he was previouſly bankrupt; ſince by the acceptance he laid himſelf under an obligation to pay, and it was the duty of the holder in proper time to require payment; nor is it to be known with certainty that it might not then have been obtained.

Accordingly, in the caſe of Hart *contra* Glaſsford, recourſe was denied from delay in negotiation, though the drawer had no funds in the acceptor's hands, No 148. p. 1580.

It was in like manner denied in that of Tod *contra* Maxwell, where the acceptor not only appears to have been without effects of the drawer's, but was bankrupt before the term of payment, No 151. p. 1583.

Answered: In general, no doubt, regular negotiation of bills is neceſſary to preſerve recourſe; but this is not a rule that admits not of exception. Such unqueſtionably there are in the caſes of bills indorſed in ſecurity, and of thoſe which have been indorſed after the term of payment. Nor in inſtances like the preſent is there leſs room for exception.

After the bankruptcy of the acceptor, when the drawers could no longer operate payment from him, what purpoſe could the notification ſerve? Beſides, as the acceptor had none of the drawers effects, this being an accommodation or *wind*-bill, it was impoſſible that, from want of intimation, any loſs of theſe could ariſe. Recourſe therefore ought not to be precluded.

This inference is ſupported by the opinion of Mr Erſkine b. 3. tit. 2. § 34.; and by the deciſion in the caſe of Macwilliam, No 171. p. 1613.

At the ſame time it may be obſerved, that the circumſtances which took place truly afforded the moſt effectual mode of notification.

No 176.

But there is quite a ſeparate ground for admitting the recourſe. For the bill having been payable in England, where undeniably it would not be cut off, it is to be judged of by the Engliſh law, 13th June 1761, Brown *contra* Crawford, No 154. p. 1587.; 4th November 1764, Stevenſon *contra* Stewart and Lean, No 103. p. 1518.

THE LORD ORDINARY reported the cauſe.

The COURT appeared to be moved by all the different reaſons ſtated in anſwer to the objection, which was therefore repelled.

Lord Ordinary, *Henderland.* Act. *Honyman.* Alt. *Fletcher.* Clerk, *Sinclair.*
Stewart. *Fol. Dic. v.* 3. *p.* 88. *Fac. Col. No* 199. *p.* 419.

1792. *June.* BATCHIN *againſt* ORR.

No 177.
Intimation between indorſer and indorſer muſt be made without any delay. It was not admitted as an excuſe that a merchant was at his country-houſe, by which a few days were loſt.

WRIGHT and BEAVIS of Briſtol granted a promiſſory note to Batchin and Birkmyre of Paiſley for L. 167, payable at the houſe of Sir James Sanderſon and Co. London; Batchin and Birkmyre indorſed this note to Meſſrs Orrs of Paiſley, who again indorſed it to Cleugh of Mancheſter. From him it paſſed, by indorſation, through many hands, till it was preſented by Ralph of Moorfields at Sir James Sanderſon's houſe, and proteſted for non-payment on the 11th June. Batchin and Birkmyre received no notice of the diſhonour till the 30th June, when they were informed, by a clerk of Meſſrs Orrs, that it had returned diſhonoured, and that they would be called upon for payment. Batchin and Birkmyre aſked for the bill immediately, but it was not delivered to them till next day, when, being ignorant at that time, that there had been an undue delay on the part of Meſſrs Orrs, they paid to the latter its contents; and ſending the note off to Briſtol, received for anſwer, that Wright and Beavis had ſtopped payment. Batchin and Birkmyre, on enquiry, having aſcertained, that the note had been returned to Meſſrs Orrs on the 27th June, and that there had been a delay of between three and four days, till the 30th, in intimating to them its diſhonour, brought, on that ſcore, an action of repetition againſt Meſſrs Orrs for the value of this note. The defenders admitted, (what is the received doctrine), that the notification of diſhonour, betwixt indorſer and indorſer, ought to be within a ſpace of time as ſhort as poſſible, and not protracted by any undue delay; and they urged, in excuſe for their delay, that Mr Orr being at his country houſe, twenty miles from town, his clerk, on receiving the letter which contained the bill, on the 27th, ſent it, on the 28th, unopened to his maſter in the country, who the next day returned it by poſt to Paiſley, whence it became impoſſible to preſent it till the day following, viz. 30th June. *Argued*, on the other hand, that this delay was unwarrantable, the diſhonour ought to have been intimated on the 27th; and, if a merchant chuſes to leave