No. 11. the petitioner, whose credit was not meant or expected to be further pledged, than that the sum drawn for was truly due.

Public officers are frequently obliged to incur engagements of this kind, for sums greatly exceeding their private fortune, which, from pressure of business, or negligence at public offices, may not be immediately discharged, and it would be hard that any personal responsibility should be incurred. The contrary is established in England; 10th May 1806, Macbeath against Haldiman, Durnford's and East's Reports, Vol. I. p. 172. p. 180; 1st May 1787, Unwin against Woolsley, *Ibid.* p. 674.

The Earl likewise stated, that various other bills, drawn by him in the same circumstances, had at first been dishonoured, but afterwards paid by the Treasury, on his accounts being settled; and that the holders of them had acquiesced in an opinion of the Attorney and Solicitor General, that no personal claim lay against him. This opinion was not produced.

The Court were unanimously of opinion, that the ordinary rules of recourse applied, and refused the petition, without answers.

Lord Ordinary, *Methven.* For the petitioner, *W. Erskine.* Clerk, *Home.*

D. D. *Fac. Coll. No.* 199. *p.* 457.

1802. *February* 20, HENDERSON *against* HAY.

No. 12.

A BILL of exchange altered in the term of payment, admitted as a legal document; the alteration appearing to have been made merely to correct a mistake.

*** This case is No. 340. p. 17059. *voce* WRIT.

1803. *June* 17. FERGUSSON and COMPANY *against* BELSH.

No. 13.

Protest is necessary, though the accepter has become bankrupt before the term of payment.

JOHN BELSH, cashier of the Merchant Banking Company at Stirling, remitted to R. and G. Fergusson and Company, merchants in Carlisle, a bill for £12. 12s. drawn upon and accepted by John Risk in London. When the bill became due on 5th June, Risk had committed an act of bankruptcy: He was unable to pay it; but no protest was taken upon the bill.

The dishonour was notified to Belsh in a letter of the 15th, who, in answer, (18th June 1801), desired the protest to be sent to him, and added, "the "moment that the protest comes to me, I shall send you a draught on London "at sight." A protest was acordingly taken on the 29th, and sent; but Belsh

declined payment, on the ground that his recourse was lost against the prior indorser, suspended a charge for payment, and. No. 13.

Pleaded: When payment of a bill on becoming due is refused, a protest must be taken immediately, in order to preserve recourse against all concerned in its negotiation. This is a rule without a single exception; Ersk. B. 3. T. 2. § 33.; and no protest taken on the day subsequent to the last day of grace will be sufficient for this purpose; Crookshanks against Mitchell, 17th and 29th June 1748, No. 145. p. 1576. and it makes no difference that the accepter was bankrupt at the time; Langly against Hogg, 17th June 1748, No. 144. p. 1574. which rather strengthens the claim against the holder of the bill to negotiate strictly, that the proper recourse may be preserved against the indorsers.

The promise of payment was only on the idea that the bill had been duly negotiated. The letter alludes to a protest which was supposed then to be in existence, and not to one taken afterwards, which could be of no use whatever.

Answered: Protest and notification of dishonour are required by law; because it may perhaps be in the power of the drawer to take such steps as may enable him to recover his payment from the accepter; but if it is perfectly obvious, that payment cannot be recovered from the accepter, no principle requires the same diligence. The claim upon Risk's bankrupt estate would have been made no better by the production of a regular protest than it is at this moment. No damage whatever has arisen from this neglect.

Besides, a new obligation to pay was incurred by the promise to remit the money when the protest should arrive; after which there could be no longer any pretence for withholding repayment.

The Lord Ordinary (24th November 1802) "in respect the bill charged on "was not duly negotiated, sustains the reasons of suspension, suspends the "letters *simpliciter*, and decerns; finds the chargers liable to the suspender in "expenses."

To which his Lordship adhered, on advising a representation with answers, (20th January 1803), "upon the ground assumed in the interlocutor repre-"sented against; and in respect the bill charged upon being drawn in Scotland, "and payable in England, is a foreign bill, requiring a regular protest on non-"acceptance or non-payment, as well as notification of the dishonour within "three posts at farthest, while the English statutes referred to by the repre-"senters appear to relate exclusively to inland bills, and that the promise of "payment made to the representers on receipt of the protest, must be under-"stood to have implied a timely protest."

To these interlocutors the Court adhered, (17th June 1803) upon advising a petition with answers.

Though it appears that in England, by the common law, inland bills, that is, bills drawn and accepted within England, did not require strict negotiation; and that it was only by 9th and 10th William III. C. 17. that protests were in-

No. 13. troduced on such bills; and that, consequently, the only consequence yet arising from the failure to negotiate strictly, was, that the holder has no recourse for the interest and for damages, a rule extended to promissory notes, by 3d and 4th Anne, C. 9; yet with us no distinction relative to protesting has ever been made between foreign and inland bills. In both, the same rules hold; making it in all cases essential to protest upon the last day of grace in case of non-payment.

Lord Ordinary, *Hermand.* For Suspender, *Montgomery*.. Agent, *Coll Macdonald*, W. S.
Alt. *W. Erskine.* Agent, *A. Young*, W. S.

F. *Fac. Coll. No.* 111. *p.* 244.

1803. *June* 17. JARRON *against* SMITH and COMPANY.

No. 14.
Due negotiation not necessary among co-cautioners in a debt constituted by bill, the recourse being preserved against each other by the bond of caution.

What is the last day of grace?

JOHN COBB, tenant in Auchphorsie, along with Robert Cuthbert, James Peter, Charles and John Alexander, granted a bond of caution (January 1794) to James Smith and Son, agents for the Bank of Scotland at Brechin, to relieve them to the extent of £2000, for all bills which they might hold in the name of Cobb, either as drawer, accepter or indorser.

In 1796 Cobb became insolvent, which made the two Alexanders also stop payment.

Robert Jarron, who had married the daughter and representative of Peter, and Cuthbert, were thus the only solvent cautioners, and were jointly obliged to relieve Smith and Son from Cobb's bills, getting from them an assignation to the bills, of which they were thus obliged to make payment, (August 6th, 1799), "in order to enable them to operate their relief against the parties "liable in payment thereof."

Among these bills was one for £300. drawn by Charles Alexander, and accepted by Cobb. It was blank indorsed to John Alexander, by whom again it was indorsed to Cuthbert, and by him to Smith and Son. It was dated the 30th April, and payable three months after date; and protested for non-payment on 3d of August.

Jarron, in virtue of the assignation, raised letters of horning upon the bill and protest against Cuthbert as being the last indorser, to relieve him from the half which he had paid as cautioner for Cobb.

Cuthbert suspended, upon the ground that the bill was not duly negotiated; that, therefore, he could not be liable as indorser; and that having paid one-half of the bill, in virtue of the bond of caution, he could not be called upon to pay the other half to Jarron, who must ultimately pay it in virtue of the same bond of caution.