

at Liverpool to Barclay, merchant in London: Barclay, without delay, demanded payment from Smith; and, on his refusal to pay, took a protest in common form. It appeared, from an affidavit afterwards made by Smith, that he did not refuse payment because the bill was over-due, but because he had not value in his hands.

No 148.

Hart, the first indorsee, upon intimation of dishonour, retired the bill, and insisted in recourse against Glasford, the first indorser.

Pleaded for Glasford: The bill not having been presented for acceptance till after the expiry of the days of grace, was not duly negotiated; and therefore, by the custom of merchants, and the decisions of this Court, no recourse can be allowed.

Pleaded for Hart: Regular negotiation is required in bills, that the drawer may be thereby warned against trusting the intended acceptor, who has refused to obey his mandate, or because the neglect of the proteur may prejudice the drawer: These reasons apply not to the present case; for Warnock the drawer had no money in the hands of Smith, nor afterwards remitted any to him. Neither could Glasford suffer any damage from the neglect of negotiation; he may still affect the estate of Warnock in common with the other creditors of Warnock; and had the bill been duly negotiated, he could not have had any preference: As, therefore, the neglect of negotiation could not possibly affect the interests of the parties concerned, recourse is still due to the proteur.

' THE LORDS found no recourse due.'

For Hart, *Sir D. Dalrymple.*

Alt. Lockhart.

Fol. Dic. v. 3. p. 84. Fac. Col. No 154. p. 229.

1757. June 24. MESSRS HAWKINS and Co. *against* JOHN COCHRAN.

IN a process, for recourse against the drawer for a bill of exchange, it appeared that the bill was protested within the days of grace for not payment, and that due notice was given of the dishonour of the bill. The defence insisted on was, That the bill was not returned to the drawer till 39 days after it was dishonoured.—It was answered, That the indorsee who protests the bill for not payment, is not bound to part with his security to the drawer more than to the acceptor. Nor is it sufficient to say, that the indorsee ought, in equity, to return the bill and protest to a correspondent, in order to be delivered up upon receiving payment; for the holder of a bill is not bound to have a correspondent in the place where the drawer lives. Were that necessary, a correspondent would be also necessary in the different places where the indorsers live.

No 149.
The proteur of recourse is not obliged to return the bill and protest to the drawer, until he receive payment.

No 149.

THE COURT repelled the defence, upon this ground, That the bill and protest belonged to the pursuer of the recourse; and that he was not bound to part with the document of his debt or his diligence, till he got payment.

Sel. Dec. No 130. p. 186.

* * * The same case is reported in the Faculty Collection :

JOHN COCHRAN drew a bill, bearing value, upon Fergus Kennedy, for L. 28, payable seventy days after date. This bill was indorsed to Woodrop, by him to Hawkins Hamilton and Company of Lynn-Regis, by them to Hawkins of Sunderland, and from him, through several hands, it came to Townshend of London; who not getting payment, regularly protested it, and returned it upon Hawkins of Sunderland.

Hawkins Hamilton and Company of Lynn-Regis, gave due notification of the dishonour of the bill to John Cochran; but Hawkins of Sunderland, instead of returning the bill and protest to Cochran, sent it back to a correspondent in London, to try if payment could be got of it; by which means the bill and protest did not come into the hands of Cochran till 39 days after the dishonour of it.

Cochran being pursued upon recourse by Hawkins Hamilton and Company of Lynn-Regis, and by Hawkins of Sunderland, *objected*, That they had lost the recourse, by keeping up the bill and protest so long as 39 days after the dishonour, and that they ought to have been returned the third post.

' THE LORDS repelled the defence, and found expences due.'

A&. Lockhart.

Alt. Burnett.

Fol. Dic. v. 3. p. 88. Fac. Col. No. 29. p. 50.

1758. *January 9.*

WILLIAM ALEXANDER, Cashier for the Edinburgh Ropery Company, *against*
ROBERT CUMING, Shipmaster in Leith.

No 150.

A bill indorsed in security, found not to require negotiation. See Murray against Groffett, *infra*.

ROBERT CUMING became debtor to the Ropery Company in fundry articles, amounting to L. 119 : 8 : 8½ Sterling. Upon the 25th September 1753, he fitted his account with Alexander Ogilvie, the Company's clerk; and not being in cash, he indorsed some bills to Ogilvie, particularly one accepted by James Cuming his brother, for L. 29 : 9 : 11 Sterling; to which he added an acceptance of his own for the balance. Ogilvie, on the other hand, gave Cuming a copy of his account, with a note of the bills indorsed, and the following doquet subjoined: ' Received from Mr Robert Cuming the above bills L. 81 : 16 : 8½, with his own acceptance, of this date, payable in six months, for L. 37 : 4s. Sterling, *which, when paid, are in full of the above account; and the same is discharged for the Edinburgh Ropery Company.*'