double stipulation, one for interest and another for principal. Pay L.200. and also L10, would have been a good form of a bill. Homologation by payment is good against exceptions founded on the Act 1681.

HAILES. It has appeared after inquiry, that no fraud can be charged against this transaction. Had Rattray been alive and solvent, he could not have objected to this as a *literarum obligatio*, because the nullity was of his own making: he would have been barred by the exception of fraud. Shall his creditors be allowed to take advantage of a plea which he himself would not have been permitted to urge?

PRESIDENT. Decisions go far in setting aside, not only the stipulation of interest, but also the principal, on account of such stipulation; and I do not go back upon decisions. Exceptions ought to be made as to foreign bills of exchange, which frequently contain stipulations of interest: an exception might also be made as to merchants' bills or promissory notes. This is a holograph writing: if good against Rattray, it would be good against every one in his right.

HENDERLAND. The decisions denying action, or bills bearing interest, were not founded on mercantile law. [If bills had continued merely as substitutes for the conveying money from place to place, those decisions would never have been pronounced, and, whenever bills resume their original nature, they will not be repeated. At present, every informal scrawl is dignified with the name of *bills*. We have seen legacies, marriage articles, cautionary obligations, and discharges from such obligations, constituted by what is called a *bill*; and I despair not of seeing indentures, and promises to marry, in the like form.]

On the 23d June 1790, "The Lords, in respect of the circumstances of the case, passed the bill of advocation;" altering the interlocutor of Lord Dreghorn.

Act. Wm. Honeyman. *Alt.* A. Wight.

Diss. Eskgrove, Swinton.

N. B. From the manner in which the case was treated, this may be considered as a decision in favour of Blair.

1790. *June* 23. ROBERT CARRICK *against* HENRY WILLIAM HARPER.

BILL OF EXCHANGE.

Although, on account of circumstances, the dishonour of a promissory note was not intimated by one indorser to another till the 19th day; the court found recourse was not lost, there being no negligence or unnecessary delay.

[*Fac. Coll. X.* 259; *Dict.* 1614.]

JUSTICE-CLERK. Proposed to alter his own interlocutor.

PRSIDEENT. Recourse is still open. This is a promissory note to the effect of being an inland bill. The rule as to three posts, mentioned by Mr Erskine,

seems erroneous: the rule is, that there be no delay. Lord Mansfield, in the case of Hodgson and Donaldson, said that there was no such rule as that of three posts. As to the 14 days, the clause in the Act 1772 is not carefully drawn. Fourteen days may be too much, or it may be too little; and the clause ought to have been in the words of the English statute of William and Mary. The present case, however, goes upon different principles. There was no delay in the indorsers. The plea of the defender is ungracious. [Soon after, Harper applied for a sequestration, and the President observed that that accounted for the defence which he made.]

On the 23d June 1790, "The Lords found recourse due;" altering the interlocutor of the Lord Justice Clerk.

Act. R. Blair. *Alt.* A. Wight.

1790. *June 25.* CHARLES and JAMES BROWN and COMPANY *against* WILLIAM WILSON.

CAUTIO JUDICIO SISTI ET JUDICATUM SOLVI.

The security of a cautioner *judicio sisti*, is not entirely at an end by the obtaining of decree, without requiring the cautioner to produce the person of the debtor. Such requisition may be made at any time before the lapse of the period allowed for extracting decree.

[*Dict.* 2059.]

ESKGROVE. Messrs Brown ought not to have extracted the decree: it was their business to secure the body of the debtor: now an extract put the cause out of Court. They probably expected payment, or a surrender by the debtor; but, finding he had absconded, they brought another action before the Sheriff: it ought to have been brought before the magistrates; but this was within the six months.

HENDERLAND. A caution *judicio sisti* is, that the debtor shall be presented *usque ad sententiam.* The next claim ought to have been for caution *judicatum solvi.*

PRESIDENT. The bail-bond was to present at any time during six months. An action is brought: the action would have continued even during six years: it went on, and a judgment was given. Had the cautioner been called, he must have presented the debtor. Even at the moment of the sentence pronounced, he might have required the cautioner to prolong caution until there was an opportunity of putting the debtor in prison. Instead of that, he hung up his cause, suffered the debtor to escape, and then went into another Court.

JUSTICE-CLERK. Six months do not terminate the action against the cautioner. The bond relates to all the diets of Court. The debtor must be presented whenever the pursuer requires the cautioner so to do. The cautioner, by presenting, is free; but the pursuer ought to have intimated thus, "I am