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.

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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

No 177. his banking houſe, and go to the country, he ought to commit his buſineſs to a reſponſible perſon, empowered to open his letters, and tranſmit ſuch as require diſpatch. On the part of Meſſrs Orrs, it was attempted to be ſhown, that no injury had in fact ariſen from the delay, as the bill, though it had been notified on the 27th as diſhonoured, could not have arrived at Briſtol before Wright and Beavis had committed an act of bankruptcy. The COURT thought it unneceſſary to inveſtigate that circumſtance. It was enough that an undue delay of three days was clearly inſtructed; and on that medium they decerned for repetition againſt Meſſrs Orrs. *See* APPENDIX.

*Fol. Dic. v.* 3. *p.* 87.

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1794. *February* 21. REID and Co. *againſt* COATS.

No 178.

IN this caſe, which was ultimately decided in the Houſe of Lords, it was held, in conformity with Murray againſt Groſſet, No 156. p. 1592. that a bill indorſed in ſecurity requires negotiation. *See* This caſe in Synopſis.

*Fol. Dic. v.* 3. *p.* 89.

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1794. *December* 9.

WILLIAM and JOHN HARRISONS, *againſt* EDWARD CHIPPENDALE, Truſtee on the ſequeſtrated Eſtate of Macalpine and Company.

No 179.
Found, that when a debtor in a bill becomes a bankrupt, and a claim is made for it on his eſtate before the term of payment, the want of due negotiation cannot be objected by his creditors.

When a bill has paſſed through the hands of a perſon who is neither drawer, acceptor, nor indorſer of it, no recourſe lies againſt him, if it be afterwards diſhonoured.

WILLIAM and JOHN HARRISONS, and Macalpine and Company, had been accuſtomed to accommodate each other by a mutual exchange of bills.

The latter became bankrupt in May 1788, and at that time bills to a large amount were in the circle, accepted by the Harriſons, and which they were afterwards obliged to diſcharge.

The Harriſons had in their poſſeſſion, at the time of the failure, bills to the ſame amount delivered to them by Macalpine and Company, by whom ſome of them were drawn, but others were neither drawn, accepted, nor indorſed by them. The debtors in all theſe bills had become bankrupt, and claims had been lodged on their eſtates before the terms of payment.

The Harriſons entered a claim on theſe bills on the ſequeſtrated eſtate of Macalpine and Company, and produced, in ſupport of it, on the one hand, the bills they themſelves had accepted, retired; and, on the other, the bills they had got from Macalpine and Company, diſhonoured; an account-current atteſted by Macalpine, after his bankruptcy; and a copy of certain proceedings in the Court of Chancery, relating to theſe bills, in conſequence of a claim entered for them on the Engliſh eſtates of the bankrupts. They alſo referred to the mutual books of the parties.

The truſtee on Macalpine and Company's eſtate