

1766. December 9. JOHN PAXTON *against* GEORGE MORE.

PROMISSORY NOTE.

Arrester on a Debt of the original Creditor was preferred to the Indorsee.

[*Faculty Collection, IV. 278 ; Dictionary, 12,259.*]

JUSTICE-CLERK. Promissory notes have as extensive a course as bills; are indorsed daily, and are understood, in the practice of merchants, though not in law, to be valid: but still they have not the same privileges as bills.

AUCHINLECK. Bills are good for nothing if they debord from their proper nature. How then can a promissory-note have the privileges of a bond? A promissory-note is indorsable, but such indorsation has no privileges. The arrestment is good.

PITFOUR. In England, promissory-notes have, by statute, the same privileges as bills; this might be expedient in Scotland, but it is not the law of Scotland. Our decisions are uniform as to this matter of notes. It was doubted, of old, whether promissory-notes were probative: at last it was found that they were probative. The next question, whether indorsable?—As probative, they may be indorsed; other deeds *in re mercatoria* are indorsable, as debentures, —31st January 1724, mentioned by Edgar, 22d January 1750, *Alison against Seton*. Another question, whether indorsable blank? Here a difficulty from the Act 1696. That Act cannot extend to promissory notes or debentures; yet, in custom, such blank indorsements are allowed. An indorsement may be filled up *a quocunque* without check; but still the other extraordinary privileges of bills are not to be extended to promissory-notes. He who takes indorsements must beware, for he has no negotiation. The decision, *Clarkson*, in 1757, is just. After an assignation, you cannot prove by the oath of the assigner.

The Lords preferred Paxton, the arrester,—adhering in effect to Lord Ellick's interlocutor.

Act. H. Dundas. Alt. J. M'Claurin.

1767. January 20. JAMES DEWAR of Vogrie, *against* MR WILLIAM FRAZER, Writer to the Signet.

PROPERTY.

A proprietor may build a Drawkiln for burning lime on any part of his property, although thereby a conterminous heritor's property should be hurt.

[*Faculty Collection, IV. p. 88 ; Kaimes's Select Decisions, p. 323 ; Dict. 12,803.*]

COALSTON. A proprietor may use his property as he pleases, unless it be