tested till the 13th. The debtor in the notes became bankrupt on the 23d of July. No 6.

THE LORDS found recourse competent, though in the case of a bill of exchange it would have been cut off by failure of negociation. But it seems to have been the opinion of the Court, that promissory notes did not require exact negociation.

Act. *Lockhart, Solicitor Dundas.* Alt. *Macqueen.*

G. F. *Fol. Dic. v. 4. p. 154. Fac. Col. No 57. p. 292.*

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

No 7.
Arrestment, whether preferable to the indorsation of a promissory note? The privileges of bills are now extended to promissory notes.

AN arrestment of the sum in a promissory note, laid in the hands of the debtor in the note, and proceeding upon the debt of the original creditor, was found preferable to an indorsation blank in the date, there being no sufficient evidence that the indorsation was prior to the arrestment.

It is unnecessary to resume the debate, whether promissory notes fall under the act of Parliament concerning blank writs, if they were transmissible by indorsation, and, in general, if they were entitled to the other privileges of bills of exchange, which are now extended to them by the act 12th George III. ch. 72.

For the Indorser, *Maclaurin.* Alt. *H. Dundas.*

G. F. *Fol. Dic. v. 4. p. 154. Fac. Col. No 49. p. 278.*

1771. *January 25.* GREIG *against* GREEN.

No 8.
Action of recourse found not competent against the indorser of a promissory note. But see Act 12. Geo. III. cap. 72.

GREEN being debtor to Greig for meat furnished, indorsed to him a promissory note for L. 27 : 9s. the pursuer paying him the difference. The note was dated the 11th November 1767, and in these words: "I promise to pay Mr William Green, or order, thirty days after date, twenty-seven pounds nine shillings Sterling, value received. (Signed) EBENEZER M'CULLOCH."

And on the back thus, "Pay the within contents to Alexander Greig or order. (Signed) WILLIAM GREEN."

Upon the 14th December 1769, which was within the days of grace, the pursuer protested this note against M'Culloch for payment, and against Green the indorser for recourse, to whom he also intimated the dishonour; and having brought an action before the Sheriff of Edinburgh against both M'Culloch and Green, the Sheriff decerned against M'Culloch in absence, and also against the defender, Green, for recourse. The cause being brought into Court by advocation, and informations ordered,

No 8.

The pursuer *pleaded*;

The present was a question truly of a mercantile nature; and it was highly important, and indeed necessary to transactions of that description, that the same rules should hold with regard to promissory notes that were established as to bills of exchange. From these considerations, the law, as to promissory notes, and their privileges, had from time to time been gradually extended. When first introduced, they were found null, as wanting the legal solemnities, 28th January 1708, Arbuthnot, No 1. p. 12255.; but soon thereafter, a different doctrine was adopted, and they were found privileged, 7th December 1711, Easdale, No 3. p. 12256. For a number of years, promissory notes had been held to be transmissible by indorsation like bills of exchange, 2d February 1739, Forbes *contra* Innes, No 4. p. 12258.; and hence, upon these liberal principles, it seemed but a small stretch, if any, to give the same recourse to an onerous indorsee in the one case as in the other. From the nature of the transaction in every indorsation, there was an implied recourse, which was sanctioned not only by the custom of merchants, but by the common law; for if any regard was paid to an indorsation at all, it must be held either to imply a warranty of the debt, or a receipt for money instantly paid; and, in the case, 18th December 1760, Coutts *contra* Nisbet, No 153. p. 1586. recourse upon a promissory note had been expressly sustained.

The defender *pleaded*;

According to the general principles of law, an indorsation could in no case be considered in a more favourable light for the indorsee than as a simple assignation, which implied no warrandice that the debtor was solvent, but only that the debt was truly due and free from legal exception. So far, therefore, from an indorsation implying recourse, the presumption was directly the reverse. The statute 1681, c. 20, related only to the privileges which foreign bills of exchange were declared to have; and as it was deemed necessary to have a new act of Parliament, viz. 1696, c. 36, to entitle inland bills to the same privileges, and as neither of these statutes mentioned promissory notes at all, it was conclusive that the legislature thereby declared its intention, that these documents should not enjoy the same privileges which the others by express enactment were possessed of. Recourse against the indorser of a bill was one of the strongest privileges indulged to that species of transaction, and the most contrary to the common principles of law; and was therefore the last to be either implied or presumed, not only in opposition to what appeared to be the clear intention of the legislature, but to the uniform decisions of the Court; 12th February 1708, Bundie *contra* Kennedy, No 2. p. 12256.; 7th December 1711, Eskdale *contra* King, No 3. p. 12256.; 2d February 1739, Forbes *contra* Innes, No 4. p. 12258.; 1766, More *contra* Paxton, No 7. p. 12259.; 13th January 1767, Wardrope *contra* Laurie; *

* Not reported;—See APPENDIX.

5th March 1767, Taylor *contra* Scott; * and in the case 3d January 1735, Jackson *contra* Ballantyne, * the very point in question was expressly determined. No 8.

In giving judgment, the LORDS were of opinion, that though promissory notes were now, though defective of solemnities, held to be probative as *in re mercatoria*, yet that the Court could go no farther, and extend to them recourse, which was one of the highest privileges of bills of exchange, without the authority of a statute; which in England had for this purpose been thought requisite.

They accordingly " sustained the defence, and assoilzied;" to which interlocutor, upon advising a petition and answers, they adhered.

Lord Ordinary, *Coalston.* For Greig, *A. Gordon, jun.* For Green, *J. Ferguson.*
Clerk, *Gibson.*

R. H. *Fac. Col. No 71. p. 209.*

See BILL OF EXCHANGE.——See APPENDIX.

* Not reported;—See APPENDIX.