

1758. *November 15.*      *TOD against* ———.

[*Fac. Coll. II. No. 123.*]

IN this case it was decided unanimously, that a bill must be protested for not payment upon the third day of grace at farthest; and if it was a Sunday, or other holiday, upon the second: and a protest upon the fourth day signified nothing in a question concerning the recourse. This was finally decided in the case of *Mitchell of Colpney*, in the year 1751, after much variation of judgment among their Lordships, and is now considered as established law.

Another question here was, Whether the acceptor of the bill, stopping payment two days before, was any reason for not protesting the bill in due time. It was said that the protesting, after the acceptor had stopped payment, could be of no use to the creditor, because the debtor having taken out a statute of bankruptcy, his whole effects were, from the time of his stopping payment, vested in the trustees under the commission. But the Lords were of opinion that the strict forms of negotiating bills were not to be dispensed with on any pretence of their being useless for operating payment. *Dissent. tantum* Kaimes.

Lord Auchinleck said, that, as that whole matter of negotiation and recourse was contrary to the common rules of law, which required only that the cedent of the debt should warrant *debitum subesse*, and was entirely governed by custom, that custom he thought ought to be religiously adhered to.

1758. *December 13.*      LORD ROTHES *against* HIS CREDITORS.

[*Kilk. 14th December 1758; Fac. Coll. II. No. 145.*]

IN this remarkable cause it was debated, Whether a deed of entail, not completed by infeftment before the Act 1685, but kept in the possession of the granter till about the year 1690, ought to have been recorded, according to the directions of that statute, in order to be effectual against creditors and purchasers?

It was PLEADED for the creditors,—That the tailyie ought to have been recorded, *1mo*, Because the regulations of the statute extend to all tailyies that are now in being, even those completed by charter and sasine before the statute; *2do*, That these regulations extend at least to such tailyies as were not completed, neither by infeftment nor publication, till after the statute.

On the *first* point it was pleaded by Pitfour,—That, before the statute, an opinion had prevailed among some lawyers of this country, and which also had received the sanction and judgment of this Court, that limitations might be imposed upon property that would be effectual against creditors and purchasers. How these limitations were to be expressed, and what different clauses were necessary for the purpose, was not a point very well settled, as