

or at farthest within 24 hours after. But Bills at Sight have the Privilege of Respite Days, when they do not exceed three or four Days; as at London a Bill upon Sight is only payable three Days after presenting. Bills may be paid either simply in the Terms thereof by him on whom they are drawn or Superprotest for the Honour of the Drawer or Indorser by the Person drawn upon if he never simply accepted, or by any other indifferent Person in Honour of the Drawer or Indorser or Acceptor, or for Honour of them all even without Order: Whether the Bill was formerly simply accepted by him on whom it was drawn, or accepted only Superprotest by him, or by any other. But before any Bill can be lawfully paid superprotest for Honour, the same must be protested for non Payment against him on whom it was drawn. And whatever Caution is necessary to be exhibited in honouring Bills protested for non Acceptance, is as needful in paying Superprotests: And the same Reasons for all these Formalities hold alike in both Cases. Upon the last of the Day of Grace if not the Day before, and on the penultimate Day before a Sunday or Holy Day, when they are not to be paid, the Bill ought to be protested against the Acceptor, or the Drawer, or the Indorser, or against all of them, if they are not to be paid. The Possessor of a Bill preserved his Right Intire by protesting the same for non Acceptance, or for non Payment: Which is an essential Piece of Diligence, that cannot be dispensed with or supplied by Witnesses or Jura of Party, or by any other Act. The Design whereof is only to signify to the Drawer or Payment, that the Person drawn upon was either unwilling or not to be found, or insolvent, and thereby to make the Drawer liable. For there is always Action competent to the Creditor in the Bill against the Acceptor, whether it be protested or not; tho' without that Formality, in test the Bill protested must be presented Act 20. Par. 3. Ch. 2. With all the Indorsements if any be, copied and transcribed verbatim, Edit. de Commerce Tit. 5. Art. 9. This on Account of the Reasons given by the Party why he does not honour the Bill. The naked having of the Bill without any further Title is sufficient to protest for non Acceptance, forasmuch as that may be made up at any Time before Payment is required; but none without an active Title can protest for non Payment: Because the Accepting of a Bill puts Nothing in the Presenter's Pocket, but is merely an Obligation to pay in the Terms of it, to the Person that shall have Right thereto at the falling due: Whereas Payment of a Bill can only be made to one who has Right to receive and discharge, and consequently such a Person only may protest for non Payment; the Design thereof being to put the Debtor in mora solvendi, in Order to get Exchange Recourse and Damages, which can never be without an active Title in the Protester. An Instrument of Protest for non Payment, should narrate the Custom of the Place concerning Respite Days, and how many Days Intere were betwixt the Term of Payment and the Protest, to the End it may

To pay, tho' it may be protested at any Time before it falls due, without being protested to the Days of Respite.

may appear that the Possessor has not been in mora. It is no Nullity in the Instrument of a protested Bill, that the Witnesses therein insert are neither designed nor subscribing. 1697 Inglis and Foulis contra M^r Ric of Palgoun. Tho' this be required in ordinary Intimations as an essential Solemnity Act 5. Par. 3. Ch. 2. Because Bills of Exchange and Instruments of Protest are Jura Gentium and do not require designed and subscribing Witnesses for preventing inconveniences in Matters of Commerce. In all Cases where Bills are protested for non Acceptance or non Payment, Notice thereof must be sent by the next Post to the Drawer in Person, if the Possessor of a Bill neglected in due Time to protest it, in Order to Acceptance, or to protest for non Acceptance or non Payment, or to send Notice of the Bill being dishonoured and protested; he loses his Recourse against the Drawer and Indorser, if the Person drawn upon or Acceptor is in the Intire mora insolvent. ~~1710 Mill contra Erskin. Which sup of Negotiation must be observed both in Foreign and Indian Bills 10 July 1700 Brand contra Yrctown. Because if a Party being a reciprocal Contract bona fide that the Drawer of the Bill may receive his Money, and the Possessor be served with it, to indulge a Liberty to the Possessor to delay presenting it as long as he thinks fit, were contra bonum et equum to keep the Drawer always engaged subject to all Chance; and were to allow the other the whole Draft that may be had by Restraint or delaying to offer the Bill, without any Hazard of Loss. If the Possessor should upon any private Views neglect to present the Bill, when he might easily do it, he could not escape the Construction of a fraudulent Design. For dolus est si quis nolit persequi quod persequi potest, aut si quis nolit exire quod exigere potest C. 49. f. mandati. 3. The Drawer thinking after a competent Time that his Factor had answered the Bill, may not only be induced to suffer his Effects to be affected and carried away by other Creditors, but also to give him new Credit, not doubting but the former are drawn out of his Hands by the Bill: And the Factor mean while being broken these Effects are lost. Yea a Colonel of a Regiment having drawn a Precept for a certain Sum upon the King's general Receiver payable to the Keeper of the Signet for the Behoof of the Secretary of State out of the first and readiest of the Pay due to Officers of the Regiment; and the Precept being duly intimated to the Receiver, and afterwards paid in Part. The Creditor in the Precept was found not to have Recourse against the Drawer after several Years for the Remainder. In Respect he could not instruct that he had negotiated the Precept, and done Diligence for recovering Intere Payment; and the Drawer had left still in the general Receiver's Hand much more Pay than would answer the Same; albeit he had uplifted as much~~