

leges, as it departed from the proper nature of a bill. But this was also repelled, as there are instances, even among merchants, of bills drawn payable at a great distance of time; and there is no certain time fixed in the practice for the length of the term of payment.

A third ground urged for sustaining the compensation, viz. That the indorsement had been made not for value given, but in security of debt, was also repelled.

*Kilkerran, (BILL OF EXCHANGE.) No 16. p. 81.*

A purchaser accepted bills blank in the drawer's name, for the price of lands. They were effectual in the hands of an onerous indorsee; although the purchaser had objections against the validity of the disposition of the lands.

1748. December 6.

BRUCE of Kinnaird, *against* GUTHRIE & HUTCHISON.

HAMILTON of Pencaitland, and Glen of Longcrofts, tacksmen of the estates of Linlithgow and Callander, obtained from Bailie Bowie in Falkirk, their factor thereon, a disposition to his lands of Barns, and other subjects, in satisfaction of his arrears of intromissions.

The Earl and Countess of Kilmarnock, for whom the tacksmen were trustees, sold the lands of Barns to Eupham Hutchison, relict of David Miln, merchant in Edinburgh, and Henry Guthrie, writer there, for the agreed price of 6000 merks Scots; and they accepted two bills, one for 4,500 merks, payable at Whitsunday 1745; and the other for 1500 merks at Martinmas thereafter; and deposited them in the hand of Mr James Graham of Airth; who, by his missive, promised to procure them a disposition from the Earl and Countess; upon delivery of which, he was to give up the bills to David Bruce of Kinnaird.

The disposition was executed and delivered; and thereupon Mr Graham retired his letter, and delivered up the bills to Mr Bruce, to which he adhibited his subscription as drawer; having, as the value thereof, discharged a debt due to him by the Earl and Countess.

The acceptors paid the first bill; but suspended the second, on account of this defect in their progress; that there was no disposition from the trustees to the Earl and Countess, although the disposition to them, narrated the delivery of an extract of one; whereby they did not doubt, as they said, but that it was on record, and an extract would be given them; and, therefore, they gave up Mr Graham's letter; but now it appeared that no such paper could be found registered; and they offered, if the charger would shew in what register it was, to pass from their suspension, and take an extract.

THE LORD ORDINARY, 16th February 1748, ' Found, that there was sufficient evidence, that the bill pursued on, was granted for part of the price of the lands purchased by the suspenders; and that they had right to retain the sum in the said bill, until the disposition to the Earl and Countess of Kilmarnock were delivered to them.'

*Pleaded* in a reclaiming bill: The charger having discharged a debt due to him as the value of the bills, is to be considered as an indorsee for an onerous cause,

and not liable to any objections which might have been competent against the indorser: *2dly*, Without insisting on this privilege, but supposing a bond had been deposited, to be given up to him, on condition of a disposition being delivered to the grantor; he was in *bona fide* to take up the bond, and thereon discharge his own debt, on seeing the condition implemented, as it really was, and Mr Graham's letter retired.

No 101.

*Answered*: The charger cannot plead the privileges of an onerous indorsee, as the bill was not drawn by the Earl and indorsed; but the draught being blank, he admitted his subscription: And, regarding him as an assignee, or as having right to a bond, on the condition of the deposition being implemented, it is plain it was not: An obligation to deliver a disposition to land for an adequate price, especially in a letter which is shortly conceived, necessarily implying an obligation to give a progress.

THE LORDS found, That the purchasers could not retain the money for which the bill charged on was granted.

Agt. *D. Grene.*Alt. *A. Murray.**Fol. Dic. v. 3. p. 80. D. Falconer, v. 2. No 18. p. 20.*1757. *January 7.*

Sir JOHN DOUGLAS of Killhead, Baronet, pursuer, *against* WILLIAM ELLIOT,  
Writer in Edinburgh.

WILLIAM SCOT, drover, being debtor to William Elliot, writer in Edinburgh, in considerable sums; in December 1746, executed an assignation of his effects, in security to the said William Elliot, for himself, and as trustee for Scot's other creditors; *first*, in payment of a bond for L. 200, due by Scot to Elliot himself; *secondly*, for relief of two bills for L. 300, which Elliot stood bound in for Scot, and which he was afterwards obliged to pay; and *next*, in trust for behoof of the other creditors of Scot. This assignation particularly conveyed a bill, dated 25th June 1746, drawn by Irvine, Scot's partner, and accepted by Sir John Douglas of Killhead; and George Douglas, merchant in Hitchill, for L. 450, payable to the said William Scott; which bill, Scot assured Elliot, was a just and true debt; and, in that belief, Elliot proceeded, in the year 1747, to lead an adjudication against Sir John Douglas's estate; in payment of this bill, and some other debts.

Sir John Douglas afterwards brought an action of reduction of the foresaid bill of L. 450, and the adjudication following thereon; *alleging*, That this bill had been granted by him without any onerous cause, or value paid for it; and that it was only intended as a fund of credit for Scot: In proof of which he produced a letter signed by Scot and Irvine, of the same date with the bill, and addressed to Sir John Douglas and his co-obligant, in the following terms: 'Gentlemen, Whereas you have, of this date, accepted a bill for L. 450 Sterling, to William Scot, or his order, we hereby oblige ourselves to relieve you of the said sum, and all expences that may happen to arise on said bill.'

No 102.

A back-letter granted to the acceptor of a bill, found ineffectual against a creditor to whom the bill was indorsed in security; but good against other creditors, for whose behoof also the bill was indorsed to that creditor as their trustee.