

vance the money, he will not in equity be permitted, under the pretext of legal nullities, to render his engagements ineffectual.

No 11.

THE LORDS repelled the objections against payment of the bill.

Ad. J. Erskine.

Alt. A. Lookhart.

Clerk, Gibson.

Fol. Dic. v. 3. p. 74. Fac. Col. No 93. p. 141.

1762. February 24.

SCOU GAL against KER.

IN one particular a bill of exchange differs widely from a bond. Lent money is intended to remain with the borrower for his behoof, as well as that of the lender, till the one chuse to pay, or the other to demand payment. The rule does not apply *quod dies interpellat pro homine*; for a term of payment is added not to bind the borrower to pay it at the day, but only to empower the lender to make a demand at any time after that day. The debtor is not *in mora* by not paying, until a demand be made by the creditor. But where a money transaction is established by a bill, prompt payment is expected. In this case *dies interpellat pro homine*. The acceptor is not to wait for a demand, but ought to offer the money, at the term of payment, and a place is added where he is to offer the money. The whole steps necessary in negotiating a bill, depend on the foregoing principle. Where a bill is drawn payable to a third party, it is incumbent upon that third party to present the bill for acceptance, at or before the term of payment, without which the money cannot be paid at the time. If the acceptor offer not the money at the term, or within the days of grace, it is in him a sort of bankruptcy, which requires a protest by the porteur for not payment, and a notification by him to the drawer, of the dishonour of the bill: And if any of these steps be neglected, the risk of the acceptor's insolvency is justly laid upon the porteur. From these premises it follows, that if a bond be assigned to a creditor, it is understood to be in security only. The assignee who comes in place of the cedent, has the same privilege with the cedent to demand payment, or to continue the sum upon interest. But the nature of a bill is not changed by being indorsed to a creditor; and therefore he is bound to the same strict negotiation that a porteur is who purchases a bill with ready money. From the same premises it follows, that a bill, before the term of payment, is considered as a bag of money, to pass from hand to hand without obstruction. But as the acceptor has broke his engagement, if he suffer the term of payment to elapse without offering payment, a bill, after the term of payment, can no longer be considered as a bag of money. It degenerates into an ordinary security, resembling a bond after the debtor has suffered a denunciation to pass against him. No man will take such a bill in expectation of prompt payment, more than an assignment of a bond; and therefore every exception competent in the one case, ought to be equally competent in the other. For this reason, against a bill of L. 16 Sterling, accepted as the price of cattle, and claimed upon by an indorsee, for value, 18 months after the

No 12.

The privilege of summary execution, and of barring compensation, held to go together; the one being lost, so must the other.

No 12. term of payment, compensation upon a debt due by the drawer to the acceptor, was found competent.

Some of the Judges were for sustaining compensation immediately after the term of payment. But the plurality were for continuing the extraordinary privileges of a bill as long as it can be the foundation of summary execution, that is, for six months. This case, therefore, must be considered as a precedent, putting the privilege of summary execution, and the privilege of barring compensation, upon the same footing, so as that both should be lost together.

Sel. Dec. No 190. p. 254.

1782. January 29.

ARCHIBALD MACARTHUR-STEWART *against* WILLIAM FULLARTON, and Others.

No 13.

A bill was made payable after the decease of the drawer. He lived 37 years after. Action refused on it.

ON 1st August 1743, John Stewart-Murray of Blackbarony, granted to Mrs Mary Stewart, his sister, a bill of the following tenor: 'Brother, Pay to me, at the first term of Whitfunday or Martinmas after your decease, L. 140 Sterling money, value received from your sister, Mary Stewart.—To John Murray of Blackbarony, Esq;—Accepts, J. St. Murray.'

Mr Murray survived the date of this bill thirty-seven years; having made an entail of his whole estate, real and personal, in favour, first of his sister, and next of Mr Macarthur-Stewart. Upon the death of that lady without issue, her executors demanded from the latter, then succeeding to the whole moveables, which had belonged to her brother, and were in her possession, deduction of the debt due to herself by the above bill.

Pleaded for the heir, A bill payable at a term posterior to the death of the granter, is truly a novelty; and, in the present case, that event did not happen for thirty-seven years after its date. As a document of debt, the bill in question must appear in a light equally extraordinary and dangerous. Should it be sustained to that effect, many new opportunities would arise of committing forgery with impunity. But perhaps it ought rather to be considered as constituting a legacy in a manner not authorised by law.

Answered, As this bill bears value received, so there is no evidence of its having been intended to constitute a legacy. It is therefore to be understood as a voucher of debt; to which it is no sufficient objection, that the reason of postponing payment till the death of the granter cannot be clearly shown; especially as the transaction occurred between persons so nearly related.

The Court did not view the bill as constituting a legacy. They thought, however, that the right which it contained was of so anomalous a kind, as not to be the proper subject of a bill; and therefore adhered to the Lord Ordinary's interlocutor, 'sustaining the objections to the bill.' *See* LEGACY.

Lord Ordinary, Gardenston. A&S. Wight. Alt. Hay Campbell. Clerk, Robertson.
Stewart. *Fol. Dic. v. 3. p. 74. Fac. Col. No 25. p. 45.*