

bonorum, might, upon his getting out of prison, go into England, and convey his effects, as he pleased, without those to whom he granted his preferences being accountable therefor.

Answered for Thomson, The equality of creditors is a mere speculative point; it is but at best the conclusion of abstract reasoning. The Roman law preferred creditors according to the priority of their diligence; there can be no breach of morality in a creditor's getting payment of his fair debt the speediest way, or the most secret way that he can.

The words of the act 1696 are indeed general; but so are those of all general laws; and it was never intended, that this law, though general in its effects in Scotland, should have effect over debts due by persons in England, and payable in England; nor is there any instance where a mere positive institution, a retrospect too, the creature of a statute, and not of the common law, should be the rule for deciding differences concerning such debts.

'THE LORDS reduced the assignation, and remitted to the Lord Ordinary to proceed accordingly.'

A.A. *J. Dalrymple, Brown, Lockhart.*

Adv. *Geo. Pringle, A. Pringle, Advocatus.*

Fol. Dic. v. 3. p. 55. Fac. Col. No 116. p. 211.

J. Dalrymple.

1780. August 10.

DUGALD CAMPBELL against NEIL MAGGIBBON and COLIN CAMPBELL.

DUGALD CAMPBELL, MAGGIBBON, and COLIN CAMPBELL, were, among several other persons, creditors of Archibald Fletcher. In December 1778, some of these last-mentioned persons used diligence against him; and Dugald Campbell then charged him upon letters of horning. In the following month, Fletcher indorsed to Macgibbon and Colin Campbell, who lived in the same neighbourhood with him, two bills, towards payment of the debts which he owed to them. In the beginning of March thereafter, and within sixty days of the date of the indorsations, Dugald Campbell executed a caption against Fletcher, by incarcerating him. He then brought a process against Macgibbon and Colin Campbell, concluding, upon the act 1696, for reduction of these indorsations.

Pleaded for the pursuer, The act 1696 declares, 'all and whatsoever voluntary dispositions, assignations, or other deeds, which shall be found to be made and granted, directly or indirectly, by the dyvor or bankrupt, either at or after his becoming bankrupt, or in the space of sixty days of before, in favour of a creditor, either for his satisfaction, or farther security, in preference to other creditors, to be void and null.' This statute, then, is not confined to dispositions and assignations alone, but extends to all other deeds, by which, whether directly or indirectly, or whether, for the satisfaction or farther security of a particular creditor, the bankrupt endeavours to give him a preference over the rest. According-

No 201.

No 202.

Found that an indorsation to bills of exchange, by a debtor to two of his creditors, who lived in the neighbourhood with him, made within 60 days of his bankruptcy, was an alienation that fell under the act 1696.

No 202. ly it has been found by the Court to reach the case of the actual delivery of moveables; *See* p. 1124. and p. 1128. And, on the same principle, it would seem that payment in current money should in like manner be comprehended.

But the present argument is independent of that matter; because an indorsement to a bill is very different in its nature from actual payment in cash. The latter is an immediate extinction of debt. The former does not in itself extinguish debt, and may not be even the means of doing it. It is the payment thereby obtained which extinguishes a debt. Bills indeed in the hands of an onerous indorsee are often compared to bags of money, free from all exceptions, and in particular the claim of compensation. But however just the comparison may be in some respects, it surely does not follow, that it must equally hold in all; as, in particular, that because the delivery by a debtor to his creditor of a bag of money equivalent to the debt extinguishes it, the indorsement to a bill should have the same effect, though it may very well happen that a bill for the largest sum may not produce a single farthing. Although, therefore, it were granted, that actual payment is not within the sanction of the statute, and though it were likewise admitted, that bills indorsed for present value are without that enactment; still it is clear, that bills, like those in question, indorsed in satisfaction or security of prior debts, are comprehended under it, and are void, February 2. 1700, *Durward contra Wilson*, No 191. p. 1119.; January 16. 1713, *Campbell contra Graham*, No 192. p. 1120.; Lord Bankton, b. 1. tit. 13. § 28.

Answered, Bills in the possession of onerous indorsees are free from every exception or restraint which do not appear *ex facie* of them, without any distinction from their onerosity arising out of present or prior value. In particular, they are exempted from the claim of compensation, *Kilkerran*, p. 85; *Thomson against Colvill*, *voce* BILL of EXCHANGE; *Douglas contra Elliot*, January 7. 1757, *Fac. Col.* No 8. p. 13. *voce* BILL of EXCHANGE; and if so, they should as little be liable to the exception of the act 1696. Accordingly as payments in money do not fall under this statute, so neither do indorsements to bills of exchange; August 1. 1760, *Bean contra Strachan*, No 37. p. 907.

The Court considered cases of this kind as different from those in which the debtor and creditor live at a great distance from each other, and where payments could not be easily made, except by the intervention of bills. In that case, the bills would not have fallen under the act 1696; but to sustain indorsements, such as the present, made by one neighbour to another, it was observed, might tend in a great measure to defeat the purpose of that statute.

THE LORD ORDINARY had found 'the bills subject and liable to be reduced upon the act of Parliament 1696; and the defenders liable to repeat the payment of them, which they had received, for behoof of the pursuer, and the whole creditors of Fletcher.'

To this interlocutor 'The Lords adhered.'

Lord Ordinary, *Monboddo*. *Ast. Cullen*. *Alt. Ilay Campbell*. Clerk, *Campbell*.
Fol. Dic. v. 3. p. 55. Fac. Col. No 125. p. 230.

Stewart.