

1784. June 18.

JAMES SPENCE *against* WALTER SPENCE.

No 14.

IN this case the Court found, that a writing, though in the proper form of a bill, and though not proved to be false, yet could not, from the circumstances in which it appeared, be sustained as probative, or as a ground of action.

A& H. Erskine.  
Stewart.

Alt. M. Ross.

Clerk, \*Menzies.

Fac. Col. No 158. p. 247.

See Synopsis relative to this case.

1793. December 18.

The DISPONEES of GEORGE STEEL *against* DAVID WEMYSS.

GEORGE STEEL, on the 16th February 1790, granted to David Wemyss, 'as a consideration for his services and trouble,' a promissory note for L. 500, payable at the following Whitsunday.

In payment of which he, on the 7th June, gave him the following draught, addressed to the Secretary of the Bank of Scotland: 'On sight pay to David Wemyss, or his order, Five Hundred Pounds Sterling, which place to my account, without further advice.'

Neither the promissory note nor the draught were holograph of Mr. Steel, or attested by witnesses.

Mr Wemyss did not present the draught at the Bank till after Mr Steel's death, (24th June 1790), when payment was refused.

The disponees of Mr Steel then brought a reduction of the promissory note and draught.

The services condescended on, as performed to Mr Steel by Mr Wemyss, were, assistance in the general management of his affairs, and particularly of a large farm, which he kept in his natural possession, and which his advanced age, it was said, prevented him from superintending.

The disponees denied that these services had been performed; and further *Pleaded*, Bills and promissory notes are exempted from the solemnities required in other writings, only where they are used as a medium of commerce, which is their proper object. When granted without an onerous cause, or for the delivery of goods, and for the same reason, when granted as a reward for services and trouble, for which the granter was under no legal obligation, they are altogether ineffectual; 13th February 1724, Hutton against Hutton, No 16. p. 1412.; 9th November 1722, Fulton and Clerk against Blair, No 15. p. 1411.; 3d December 1736, Weir against Parkhill, *infra b. t.*; 11th February 1761, Wright against Wrights, Fac. Col. No 20. p. 36. *voce* LEGACY.

The draught is not only liable to the same objection with the promissory note, but it does not create the same presumption of value received. Such draughts are frequently given to servants merely to get money for their masters. They are mandates dissolved by the death of the drawer.

No 15.

A bill or promissory note granted as a reward for services and trouble found effectual. A gratuitous draught on a banker found valid, after the death of the drawer.

No 15.

*Answered*, A bill or promissory note may validly be granted for any service done to the drawer, for which a reward is due either by stipulation or in equity, as well as for value in money or goods; 1781, Elizabeth and Barbara Dykes against Robert Stark, (not reported.)

THE LORD ORDINARY reported the cause on informations, when it was

*Observed* on the Bench, If the services condescended on were actually performed, a bill might effectually be granted in payment of them.

But the judgment of the Court went upon the draught.

When a person, it was said, who has money in the hands of a banker, grants a draught on him for payment, the latter cannot object that it was granted without an onerous cause. A donation cannot be constituted by a bill; but a bill may be indorsed gratuitously, and a draught may be granted in the same terms.

THE LORDS unanimously sustained the defence 'in regard to the promissory note for L. 500 Sterling, and relative draught.'

A reclaiming petition was refused, without answers, on the 28th January 1794.

Lord Reporter, *Abercromby*.

*Act. Rolland, R. Craigie.*  
Clerk, *Sinclair*.

*Alt. Dean of Faculty Erskine*

*Douglas*.

*Fol. Dic. v. 3. p. 74. Fac. Col. No 86. p. 190.*

\* \* \* About the date of this last case, Lord Henderland Ordinary, reported the case of a bill payable *in a certain event*. It had been, on this ground objected to, and the Court resolved to sustain the objection.

It was *observed* on the Bench, That the sexennial prescription could not be made applicable to cases, where the term of payment depended on a contingent event. The Court have hesitated to support bills, of which the term of payment was remote, as deviating from the proper nature of such documents; much more would they discountenance the present more distant deviation.

The names of the parties were Campbell against Campbell. There are no printed papers.

See A. against B. Edgar, p. 129. 10th December 1724, *voce SOLIDUM et PRO RATA*.

See Rofs against Gray, Forbes, p. 71. 16th January 1706, *voce JUS QUÆSITUM TERTIO*.

See M'Morland against Maxwell, Stair, v. 2. p. 313. 29th January 1675, *voce SOLIDUM et PRO RATA*.

See M'Leod against Crichton, 14th January 1779, *Fac. Col. No 53. p. 94. voce VIRTUAL*.

See Lesly against Nicolson, Rem. Dec. v. I. No 55. p. 105. *voce HUSBAND and WIFE*.

See Campbell against M'Gibbon and Campbell, *voce BANKRUPT*, p. 1139.