

No 1. on the back without any formal assignation, which shews the parties looked upon it as a bill. *Replied*, This note has neither the stile of a foreign nor inland bill, and could never have been protested and registered for not acceptance; and though it mentions the same being payable to the party or his order, and with exchange, yet many bonds run in that same mixed kind of stile. THE LORDS observed, That bills are exposed to much hazard of forgery, therefore their privileges were not to be extended, and found this was only a ticket, and could not claim the privileges, either as to the want of solemnities or summary execution, that bills have; only, it appearing to be all of one hand-writ and contexture, they ordained the parties to be heard if it was holograph, in which case it would be probative, though it wanted witnesses, if they offered to prove it was holograph.

*Fountainhall, v. 2. p. 424.*

1708. *February 12.*

MR ROBERT BUNDIE, Merchant in London, *against* JOHN KENNEDY of Culzean.

No 2.

JOHN KENNEDY of Culzean, having by his note promised to pay to David Crawford, or order, £. 35: 11s. Sterling, the 1st of September 1706, value received by him; and the said note being indorsed to Mr Robert Bundie, who pursued Culzean for payment; the LORDS found the said note was not a bill of exchange, and therefore the sum therein was compensable by the indorser's debt.

*Fol. Dic. v. 2. p. 211. Forbes, p. 239.*

\* \* See what Lord Fountainhall says of this case, in the case which follows.

1711. *December 6.*

WILLIAM KING, Merchant in Glasgow, *against* ROBERT ESDALE, Merchant in Dumfries.

No 3.

IN the suspension of a charge at the instance of William King against Robert Esdale, for payment of £. 25 Sterling, and interest thereof, which Robert Esdale, by his note, 2d December 1709, promised to pay upon the first of May then next, to William King, or order for value received; the LORDS found, That the English statute of 3. and 4. A. c. 9. giving the like remedy upon promissory notes, as is now used upon bills of exchange, for the space of three years, though made perpetual by the 7. A. c. 25. an act of the British Parliament since the Union, doth not extend to promissory notes in Scotland; because the British statute doth only make the former, which before was a temporary law of England, to be a perpetual law thereof; and the British sta-

tute being but an accessory, can go no farther than the statute of England, it was calculated to continue.

No 3.

*Fol. Dic. v. 2. p. 211. Forbes, p. 552.*

\*.\* Fountainhall reports this case :

1711. December 7.—ROBERT ESDALE, merchant in Dumfries, gives a promissory note to William King, in these terms; 'I promise to pay to William King, or his order, L. 25 Sterling, with interest, value received *per me*,' dated in December 1709. When this fell due, King protests for not payment, and registers as if it were a bill of exchange, and gives him a summary charge of horning. Esdale suspends, and his first grounds was, that the summary charge was most unwarrantable; for, *1mo*, It bore no clause of registration; nor, *2do*, has it the privilege of a bill, which by express statute, has summary execution; for this has nothing resembling the form of a bill, which must have a drawer and an acceptor; but here is neither, but a simple *obligatio mutui*, like a bond, where no summary charge can pass without the debtor's consent to registration: And if this were sustained, then all the useful caution invented by our law to prevent or discover falsehood would fall to the ground, for there needed no writer nor witnesses; the presumption against holograph writs, and the presumption that they were done *tempore inhabili* would vanish; for though these cannot be pleaded against bills of exchange *quæ reguntur jure gentium*, yet these privileges can never be extended to promissory notes; for then bonds might claim the same, being upon the matter nothing else but promissory notes in a more extended stile. *Answered* for King the charger, That the form of bills of exchange varies according to the various customs of nations, and this at least has the essentials of a bill; for it is made payable to the creditor, or his order, and bears value received, and is betwixt two merchants *in re mercatoria*; and in a late case betwixt Bundy, a London citizen, and Kennedy of Culzean, No 2. p. 12256. the LORDS found an indorsation on the back by Crawford of Drumsuy to Bundy, without witnesses, conveyed such a promissory note, and refused compensation against the indorser; all which speaks them to be of the nature of bills. *2do*, This is farther confirmed by a statute in England *3tio et 4to* of this Queen's reign, and revived *anno 7mo*, ordaining all promissory notes to have the privilege of inland bills in time coming; and the last act being since the Union must extend to Scotland. *Replied*, This note can never be transformed to a bill; and that case of Bundie's was of a note granted at London, whereas this is done in Scotland; and the acts do not reach us, seeing the second is only a continuation of the first, which did only concern England; and the second as *accessorium* can go no farther. If one makes rules of court for his barony, and afterwards purchases another barony, the first rules will not extend to the second without a new appointment; no more can the English acts since the Union reach us in private cases, without Scot-

No 3. land be expressed, our private laws being by an article of the Union reserved. It is true, the acts against counterfeiting of money, and the several species of treason, extend to us as well as England; but these laws regard the public police, and not private right. THE LORDS thought these promissory notes did not require witnesses, but could not be the ground of a summary charge; and that the English acts appeared by their stile and manner of executing, by their *scire facias*, &c. to relate only to England; and therefore found the summary charge unwarrantable, but thought it might subsist as a libel, without any new process thereupon.

*Fountainball, v. 2. p. 685.*

No 4.

1739. February 2. GORDON *against* FORBES and INNES.

AN arrestment found preferable to a blank indorsation of a promissory note.

*N. B.* Such notes cannot pass by blank indorsation, but only by assignation, or a short writing on the back of the note, and till intimation to the debtor, are affectable by arrestment, and liable to compensation. For the notes of a trading company in the act of Parliament, are only understood notes of a corporate body, as the Bank, or the like.

*Fol. Dic. v. 2. p. 211. Kilkerran, (PROMISSORY NOTE.) No 1. p. 440.*

\* \* \* C. Home's report of this case is No 48. p. 712. *voce* ARRESTMENT.

No 5.

1751. December 13. MONCRIEF *against* Sir WILLIAM MONCRIEF.

PROMISSORY notes payable on demand, bear interest from the citation.

*Fol. Dic. v. 4. p. 154. D. Falconer, Kilkerran.*

\* \* \* This case is No 7. p. 478. *voce* ANNUALRENT.

No 6.

1766. July 17. GILLENDERS *against* BIRWHISTLE.

PROMISSORY notes payable, 30th June, were indorsed 25th June, to a gentleman in the island of Lewes, with recourse, in terms of a fitted account of the same date.

The notes were transmitted by the indorsee to his agent at Edinburgh, in a letter of 26th June, and came to hand the 6th of July, but were not pro-