

## BILL OF EXCHANGE.

### DIVISION I.

### Of the Object, Nature, and Requisites of Bills.

#### SECT. I.

Money only, the proper Subject of Bills.

1713. December 16.

WILLIAM LESLIE, Merchant in Aberdeen, *against* DAVID ROBERTSON, Younger of Gladney.

IN discussing the suspension of a charge upon a bill or precept, for delivery of some bolls of falt, at the instance of William Leslie *against* David Robertson—THE LORDS found, that falt-bills, meal-bills, or bills for the like fungibles, have not the privilege of bills of exchange for money; without prejudice to their being sustained as probative *in re mercatoria*, without writer's name and witnesses, and the ordinary solemnities required in other writs; because bills for delivery of falt, or the like fungibles, are neither liquid in the value, nor bear the word *pay*, as bills of exchange for liquid sums.

*Fol. Dic. v. 1. p. 95. Forbes, MS. p. 13.*

#### No 1.

Bills for fungibles found not privileged as Bills of Exchange, but held to be probative writs *in re mercatoria*, without the necessity of the ordinary solemnities of writer's name, witnesses, &c.

1715. February 18. WILLIAM DOUGLAS *against* COLONEL ERSKINE.

COLONEL ERSKINE drew a bill upon his falt-grievs of Torrie or Kincardine, to deliver 420 bolls of falt to Archibald Ronaldson, for which he had received satisfaction. Ronaldson indorsed the bill to William Douglas for value received, who pursued the Colonel to deliver the falt, who *alleged, imo*, That a falt-bill had not the privilege of a money-bill, which passes *de manu in manum*; but that bills for falt are liable to all exceptions as other debts, and an indorsee is but an assignee. And, in this case, the true cause of the bill was a mutual bargain, whereby Ronaldson was to pay the falt in meal, or the Colonel to pay the value of 200 bolls

#### No 2.

Bills for fungibles are not privileged as bills of exchange. Indorsee considered as an assignee.

No 2,

of meal in salt; and, as the Colonel drew the salt-bill libelled, so Ronaldson gave an obligation, of the same date, to deliver 200 bolls of meal to the Colonel; and having broke shortly after, he absconded, never delivered the meal, nor required the salt for the space of several years, till of late, that the pursuer obtained from him an indorfation. The defender also *alleged*, That he had retention, in respect of the counter-obligement by Ronaldson never implemented; and that, the bill having lain over for so many years, the counter-obligement was relevant and competent against Ronaldson and his assignee or indorsee.

' Which, the LORDS sustained.'

*Dalrymple, No 139. p. 193.*

\* \* \* The same case is reported by Bruce. :

COLONEL ERSKINE having drawn a bill upon his salt-grievs for 420 bolls of salt, payable to Archibald Ronaldson, merchant in Leith, the bill is indorfed to the said William Douglas; but at the time of granting the bill, the Colonel took bond from Ronaldson for 200 bolls of meal, the price whereof was equivalent to that of the 420 bolls of salt; neither party having performed their engagements, and Ronaldson breaking in the meantime, Douglas the indorsee, after five years and odd months, protests the bill for not acceptance, and insists against the Colonel for delivery of the salt, or payment of the price thereof: And the Lord Ordinary having found, That the bill, not being a money bill, was only of the nature of an assignation, and that whatever was competent against Ronaldson the indorfer, was competent against Douglas the indorsee :

Against this it was reclaimed and *alleged* for the pursuer, That where the law makes no distinction, neither can we. Now *de praxi*, inland bills for fungibles, pass as current as money bills; nay, by express act of Parliament, 1696, cap. 36. privilege of foreign bills is extended to inland ones, without distinction, whether drawn for money or other fungibles; and were it otherwise, the currency of commerce would be very much stopped. *2do*, That this bill had all the requisites of a bill of exchange, viz. a drawer, a person on whom it is drawn, and another to whom it is payable, and that for value received; therefore it must have the same privileges.

*Answered* for the defender, That as, regularly, all objections are good against the assignee, that are good against the cedent; so there is here no exception from the rule: For though bills of exchange be indeed excepted, yet the present bill can never have the privilege of these. For by that way of arguing, even a receipt of goods would not be good against an indorsee, if the receipt were not marked upon the back of the precept. And the reason of the difference is, That bills of exchange are in place of money, and contrived to save the trouble of portage, and therefore must have a course as free as it has: But bolls of salt, or the like, cannot pass in that manner, nor is it useful for commerce that they should;

and therefore have not the privilege of bills, but are only as assignations: Nor does the act 1696 give them that privilege. For, *1mo*, The act only concerns diligence upon bills, but determines not how far exceptions competent against the cedent, are good against the assignee. *2do*, That act concerns only money bills; for it only extends the act 1681 anent foreign bills, to inland ones of the same nature; but the act 1681 concerns only money bills, as is plain from its rubric, narrative, statutory part, &c. Consequently the act 1696 concerns only money bills also: And therefore the said two acts rather argue against the pursuer, thus, That however our laws have justly given privilege to money bills, yet the legislature never thought it useful or necessary to allow the same privilege to precepts for goods. To the second, *answered*, That this bill wants an essential for giving it the privilege acclaimed, viz. that it is not a money bill, and no others are favoured by the law.

No 2.

THE LORDS found, That the bill not being for money, but a salt bill, and not protested, nor diligence done thereon for payment, during the space of five years and some months; therefore William Douglas, the indorsee, was only to be considered as a common assignee.

Act. Sir Tho. Wallace.

Alt. Ro. Dundas.

Clerk Robertson.

Bruce, No. 82. p. 98.

1729. November. BRUCE of Poufouls *against* WARK and MAXWELL.

BRUCE accepted a bill to John Wark, dated in the year 1718, binding himself to deliver, on 1st May 1718, a quantity of victual of crop 1717. Bruce brought a reduction of the bill as granted not for money, but for fungibles, and so ineffectual. Lord Drummore Ordinary, Found, the bill being dated in the year 1718, for victual of the crop 1717, and containing obligations that were not transactable by bill, was therefore null.

Christian Wark, and Archibald Maxwell, her husband, as executors of John Wark, defenders in the reduction, presented a petition to the Court, founding on *Lesly* against Robertson, and Douglas against Erskine, the two cases immediately above, as ascertaining that the bill ought not to be held to be null. In answer, it was *contended*, that all obligations conceived in writing ought to have the solemnities requisite by the statutes. That bills of exchange had, by statute, particular privileges; but it was obvious, from the terms of the statutes regarding them, that money only was meant to be the subject of the documents so privileged.

The COURT pronounced an interlocutor, 'Sustaining the bill as a probative writ; but remitted to the Lord Ordinary to hear parties procurators on the presumption of delivery, with power to determine or report.'

No 3.  
Question,  
whether a bill  
for fungibles  
ought to be  
sustained as a  
probative  
writ.