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two; that it had been made a doubt in this Court, whether inland bills of exchange barred compensation; which was decided, on the advice of merchants, 24th June 1714, Fairholm against Cockburn, *infra b. t.*; but it surely could not then be supposed bills of this sort would have that effect: This bill was, by its term of payment, designed for a permanent security, not a vehicle of money; and was indorsed for security of a former debt; which made a great difference betwixt this case and an indorsation for value truly paid: Befide, the money belonged to Jean Taylor, as was offered to be proved by Taylor's oath, the best proof that could be got in the circumstances of the case; and was partly evident from the dates, sums, and terms of payment of the two bills; which being the same, they could not have been truly executed between the same parties.

Answered, The charger knew nothing of any transaction between Taylor and his aunt and Tudhope; he took the indorsation for value, as he had condescended, and nothing was more ordinary than indorsations for value in account. Inland bills, under which denomination bills of this sort had always been comprehended, were, by statute, in all respects, made equal to foreign ones; 12th December 1711, Erskine against Thomson, *infra b. t.*; and 31st January 1699, Stewart against Gordon and Campbell, *infra b. t.*; and the indorser's oath was not competent against the indorsee.

THE LORDS adhered.

A^ct. Veitch.

Alt. H. Home.

Clerk, Justice.

D. Falconer, v. I. No 261. p. 353.

* * * See This case, as reported by Lord Kilkerran, and by Lord Kames, Div. 2. Sect. 2.

No 41.

A bill found void and null as wanting the drawer's subscription.

1748. November 9.

DOUGLAS and HOODS against LOGAN.

WILLIAM CLARK, taylor in the Canongate, was boxmaster to that incorporation for two years preceding Whitfunday 1742; and being, at accounting, found considerably in arrear, agreed to procure George Logan, lastmaker there, to become bound with him for L. 70 Sterling; which was executed, by their accepting a bill, 12th November 1742, for that sum to James Tyrie, then boxmaster, and his successors in office.

The accepted bill being shewn to the incorporation, it was observed, there was a mistake in the draught, it containing these words, *due by William Clark in part payment of the balance of my last quarter accompts*, instead of *his*; whereupon, by order of the incorporation, the clerk and boxmaster brought it back to Logan some time in January 1743, and desired him to accept a new bill for L. 60, L. 10 being paid; but he took up the bill and carried it away, the drawer not having yet adhibited his subscription thereto, and never granted any other.

John Douglas armourer, and Jean and Lillias Hoods, creditors of the incorpo-

ration, arrested in Logan's hand; and in the furthcoming he deponed as above; alleging the ground of his abstracting the bill was, that the principal debtor had engaged to give him security for his relief, in view of which he had accepted, but had not obtained it.

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The arresters insisted in their action; and the Lord Ordinary, 31st January 1745, 'Found that the said George Logan having got up the bill of L. 70 Sterling, which he acknowledged to have been wrote with his own hand, without any consideration by him given for delivery thereof, from the clerk to the incorporation, who had no power gratuitously to give it up, in prejudice of the incorporation; and that, further, it was delivered up by the clerk, to the intent that he Logan should accept a new bill of L. 60, William Clark, the original debtor, having paid the difference, Logan was *in mala fide* to detain the old, and refuse to sign the new bill; wherefore, and that it was still in the power of the creditor to supply the defect in the bill, as wanting the subscription of the drawer, at any time before production thereof in judgment: Found, that Logan was *personali exceptione* barred from objecting to the bill, the nullity of its wanting the drawer's subscription; and found him liable in the sum of L. 60 Sterling due of the debt, with the annualrents thereof.' And, 23d January 1747, Found, that after the bill had been out of the acceptor's hand, and in the possession of the incorporation, he could not lawfully retire his bill without their consent; and as there was no evidence of such consent, found that the bill was to be held as still in the hand of the incorporation; but prejudice to the defender to be heard on his objections to the bill, as to its form, or otherwise.' And, 24th June, 'refused a representation upon the point upon which judgment was therein craved;' to wit, how far the bill was void and null, as wanting a drawer.

THE LORDS, 6th July 1748, 'found the bill void and null.'

On a second bill, and answers; chiefly moved by this, that the contract was incomplete till the drawer's subscription was adhibited; that till then the acceptor had it in his power to refile; and if he had not got the opportunity of recovering the bill, he could have declared his refiling, and demanded it up;

They adhered.

A&C. Williamson.

Alt. H. Home.

D. Falconer, v. 2. No 5. p. 5.

1748. November 17. & 25.

CATHCART *against* The REPRESENTATIVES of DICK.

MARY M'HUTCHEON made a settlement of her effects on her sister Helen, wife to Elias Cathcart, who brought a process against the representatives of John Dick for L. 20 Sterling, contained in a bill accepted by Dick, payable to Mary

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A bill signed by the drawer, before producing it in Court, was