

No 75.

A false description *in gremio* of a bill, of the value given for it, does not annul it. The presumption of law, that the acceptor has got value, can only be taken off by writ or oath of party.

1793. November 29. JAMES and JOHN WALLACES *against* JAMES BARRIE.

JAMES BARRIE, junior, accepted a bill for L. 25 Sterling, drawn on him by James and John Wallaces, payable three months after date, and bearing to have been granted for 'value received in flax.' It was afterward indorsed by the drawers, and by them discounted with the branch of the Dundee bank, at Forfar.

The acceptor died before the bill became due, and it was retired by the drawers; who soon after brought an action for repayment against James Barrie, senior, the acceptor's father, as representing his son.

Barrie stated in defence, *1st*, That although the bill bore to have been granted for value in a specific commodity, no value of any kind had been received; and that therefore it was void, as containing a falsehood *in gremio*.

2dly, That although his son, as acceptor, was apparently the debtor, yet, in fact, it was an *accommodation* bill, in which he had joined for the sole behoof of the drawers, who accordingly discounted it, and employed the money for their own purposes. And that the pursuers not having allowed the bill to be protested against themselves before retiring it, and their never having claimed the debt during the illness of the acceptor, although they must have seen the propriety of clearing up the transaction, if it had been a fair one, during his lifetime, afforded presumptive evidence of the truth of this averment.

The pursuers admitted, that no value had been given to Barrie, junior, at the time he accepted the bill; but they affirmed, that they had discounted it for his behoof, and immediately after delivered the money to him; and *contended*, That, in all bills, the presumption of law is, that the acceptor is the principal debtor: That, with regard to accommodation-bills in particular, unless some general rule were adopted for ascertaining who should be ultimately liable for them, such transactions would often be inextricable; and that although circumstances perhaps might be imagined so strongly in favour of the acceptor, as to obviate the legal presumption, none such occurred in the present case.

THE LORD ORDINARY decerned in terms of the libel.

On advising a reclaiming petition, with answers, it was

Observed on the Bench: The law presumes, that the acceptor gets value for the bill; and this presumption can only be taken off by writ or oath of party. It does not signify whether value is given when the bill is drawn, or only afterwards, when it is discounted. Indeed, in accommodation-bills, the value is seldom given till the latter period. The only difficulty, in the present case, arises from the false description of the value, which is too common a practice, and is resorted to in order to make the banker believe the bill had its origin in a real transaction. This circumstance, however, will not annul a bill; provided value of any sort is either actually received, or in law presumed to have been received.

The COURT by a great majority adhered.

Lord Ordinary, *Justice-Clerk*.

A&T. G. Robertson-Scott.
Clerk, Home.

Alt. J. Buchan-Hepburn.

R. Davidson.

Fol. Dic. v. 3. p. 78. Fac. Col. No 79. p. 174.