

Court, the right becomes litigious, and incapable of alienation; surely, when a decree has been obtained, finding the right itself to be void and null, the same consequence must unavoidably follow.

THE LORD ORDINARY gave judgment against the defender.

But, after advising a reclaiming petition and answers, the Court being of opinion, that a writing, impetrated like the one in question, was of no validity.

THE LORDS sustained the defences, and assolizied.' See VIS et METUS.

Lord Ordinary, *Hailes*. Aft. Geo. *Fergusson*. Alt. *Corbet*. Clerk, *Menzies*.  
*Craigie*. Fol. Dic v. 3. p. 81. Fac. Col. No 9. p. 16.

1793: February 20.

Messrs PERCHARD and BROCK, against JAMES BRACKENRIDGE, and Others.

PERCHARD and BROCK of London, were the correspondents of Messrs Agnew and Sheppard, merchants in Guernsey. In this character, they were in the practice of paying bills drawn upon them by Agnew and Sheppard, on receiving one half *per cent.* of commission. In consequence of such payments, they were, in the year 1788, above L. 1000 in advance for that Company. In order to repay these advances, Agnew and Sheppard, made the bills, which they drew on their debtors in this country, payable to Perchard and Brock. And, in this way, they transmitted certain bills to them, payable in this manner, drawn on James Brackenridge and others, residing in Ayrshire. These bills were afterwards accepted; but when they became due, payment was refused. The present action was therefore brought against the acceptors, by Perchard and Brock, and their attorney. In defence it was

*Pleaded*: The bills in question were accepted as value for contraband goods, which the defenders never received. And, at any rate, for the price of such goods, no action can be sustained. And, as this defence would be good against Agnew and Sheppard, it must also be good against the present pursuers, who are merely their agents in this country. The bills are only made payable to them on account of the greater conveniency and advantage of remitting money to London, than to Guernsey. The pursuers, according to their own admission, give the drawers no credit for bills in this situation; but only for their proceeds, when received. They, therefore, are not entitled to the same privileges with onerous purchasers of bills, who, upon the faith of them, immediately advance their contents to the drawers. They must be considered as holding the bills in question, either as consignees of the drawers, or as *creditores hypothecarii*, for the sums advanced by them. In either view, they can have no higher right to the bills, than they would have to any other mercantile goods possessed upon the same footing; that is, a right burdened with every exception competent against their author.

Besides, if the pursuers are to be considered as onerous holders, there is an end to the objection of *pactum illicitum*, in smuggling contracts; as it is a very easy

No 109.

The holder of a bill in security for sums formerly advanced, or to whom a general balance is due, has the same privileges with a holder for value instantly paid.

No 109.

matter, for natives of this country, who carry on an illicit trade, to take their bills payable to a friendly house in Britain, in place of making them payable to themselves.

*Answered:* The pursuers did not receive the bills in question, merely for the purpose of getting payment of them, as factors for Agnew and Sheppard. They received them as a partial reimbursement of former advances made to that Company. Having, therefore, formerly given full value for these bills, they are onerous holders, just as much as if they had paid down their contents at the time of their delivery; 7th January 1757, Sir John Douglas against Elliot, No 102. p. 1515. —12th February 1778, Burnet against Ritchie, No 105. p. 1519.; Erskine, b. 3. tit. 2. § 31. Indeed, if a contrary rule were established, it would be destructive to the commerce of bills; as, at least, one half of those which occur in mercantile transactions, are granted not for money instantly received, but in payment of debts formerly contracted.

THE LORD ORDINARY reported the cause on informations.

*Observed* on the Bench: Bills sent to bankers, or others, as value in account, are considered by merchants as having every privilege of bills sent for any other sort of value, and, on faith of them, those to whom they are transmitted, give credit, and make further advances.

The COURT, by a great majority, found, 'That the pursuers were onerous holders of the bills in question, to the extent of the balance due to them by the drawers; and, therefore, repelled the defences.'

Lord Reporter, *Abercramby.* A&C. *Connell.* Alt. *Maconochie, Corbet.* Clerk *Menzies.*  
R. *Davidson.* Fol. *Dic. v. 2. p. 83.* Fac. *Col. No 30. p. 60.*

\*.\* See More particulars relative to this case *voce* PACTUM ILLICITUM.

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### SECT. III.

#### Of Bills which have no Extraordinary Privileges.

No 110.

A bill being indorsed, not for value given at the time, but in security of debt, was found excluded by an anterior discharge granted by the drawer to the acceptor.

1708. *January 15.*

HENRY CRAWFORD, Merchant in Crail, *against* ALEXANDER PIPER of Newgrange.

ALEXANDER PIPER having accepted a bill for L. 347, payable to James Arbuthnot, skipper in Montrose; and thereafter, upon clearing accounts with Arbuthnot, having procured from him a general discharge of all bills, except another bill specially therein mentioned: Mr Arbuthnot indorsed the L. 347 bill, for his own behoof, to John Auchterlony, his trustee, by whom it was indorsed blank, and left with Arbuthnot, who filled up Henry Crawford's name therein. Mr