Pleaded for Mr Crawfurd, The note was *res furtiva* which hindered the tranſmiſſion thereof; and even money when ſtolen may be vindicated, if it can be diſcovered, *l.* 78. *ff. de ſolutionibus.* No 2.

Replied, If it were relevant, there is no ſufficient evidence that the note was *res furtiva.*

THE LORDS found, That Mr Crawfurd had no claim to the note, and preferred the Royal Bank.

Act. R. Craigie, H. Home, Lockhart & R. Dundas. *Alt. Wedderburn, R. Pringle & J. Erskine.*

D. Falconer, v. 2. *No* 64. *p.* 67.

1768. *February.* BORLAND *againſt* THISTLE BANK of Glaſgow. No 3.

A BANKING company is not obliged to pay value for forgeries committed againſt them; and they are entitled, when a forged note is preſented, to ſtop its farther circulation by putting a mark upon it, certifying that it is a forgery.

Fol. Dic. v. 3. *p.* 47. *Tait's MS.*

1794. *January* 16. JOHN M'GILCHRIST *againſt* THOMAS ARTHUR.

JAMES FIFE granted to Archibald Macauſland the following order:

'*Port-Glaſgow, 23d February* 1793.

'Pay the bearer on demand, or his order, One hundred pounds Sterling, and 'debit my account with the branch of the Bank of Scotland, Greenock.

'To Meſſrs Wilſon and Arthur their agents.'

No 4.
When a perſon grants a draught on his banker, payable to the bearer, or his order, on demand, he cannot, in a queſtion with an onerous holder of it, plead compenſation upon a debt due to him by the perſon to whom the draught was originally delivered.

This order, Fife afterwards alleged, was granted without value, and on promiſe of repayment on or before the 26th February 1793.

Macauſland ſtopt payment on the 5th March following. On the 12th of that month, Fife received a charge of horning upon this draught, at the inſtance of John Macgilchriſt, who had got it as a payment from Macauſland on the 24th of February, but had not preſented it at the Bank till the 5th of March, when Fife having by that time withdrawn his money out of their hands, payment was refuſed, and a proteſt immediately taken.

Fife raiſed a ſuſpenſion of this charge, which, upon his bankruptcy, was conducted by Thomas Arthur, the truſtee for his creditors. The competency of a ſummary charge upon ſuch a note having been diſputed, the Lord Ordinary turned the charge into a libel, and found the defender liable in the ſum contained in the draught, with intereſt.

In a reclaiming petition, Arthur *contended*, That if Macauſland had immediately, upon receiving the draught, carried it to the Bank, as he ought to have

No 4. done, and got payment of it, Fife would have made the promiſe of re-payment on the 26th February effectual, as Macauſland continued ſolvent till the 5th of March; and that as Macauſland himſelf could not, ſo no perſon in his right could now demand payment of it; and farther

Pleaded: Draughts like the preſent are very frequently granted by creditors on their debtors, whether bankers or individuals; and when paid by the drawee, they operate as a diſcharge in his favour, upon whatever terms the bearer may have got poſſeſſion of them. But they have not the ſame privilege of negociation with bills or promiſſory notes. When transferred to a third party, all objections competent againſt the cedent may alſo be proponed againſt the aſſignee, as in the caſe of a bond or other perſonal ſecurity; Erſkine, b. 3. tit. 5. § 6. 10.; Bacon's New Abridgment, v. 3. p. 603. 609. Indeed, there being no fixed rules for their negociation, as there are with regard to bills, great hardſhip would ariſe from giving them the ſame privileges.

They were evidently conſidered by the Legiſlature as having effect only in favour of the firſt holder, and not transferable like bills, otherwiſe it would not have exempted from the ſtamp-duties, orders on bankers, drawn by perſons reſiding within a certain diſtance of the banking-houſe, while it expreſsly declared all orders not payable to the bearer, liable to theſe duties; 23d Geo. III. c. 49. § 4.; 24th Geo. III. ſeſ. 1. c. 7. § 3. Indeed, on the contrary ſuppoſition, the tax might be evaded in all bills payable on demand.

Beſides, bills payable to the bearer are null, as falling under the ſtatute 1696, c. 25.; 8th January 1730, Walkinſhaw's Executors, *voce* BLANK WRIT.

Observed on the Bench: The draught in queſtion is transferable like a bill of exchange. It is equally free from compenſation with a bank-note. It falls under the claſs of 'notes of trading companies,' which are exempted from the enactments of the act 1696. Beſides, the drawer having iſſued his order in theſe terms, is barred, *personali exceptione*, from objecting to the negociability of it, and the truſtee for his creditors cannot be in a better ſituation.

THE LORDS unanimouſly 'refuſed the petition,' without anſwers. *See* COMPENSATION.

Lord Ordinary, *Juſtice-Clerk.* For the Petitioner, *John Clerk.* Clerk, *Sinclair.*
D. Douglas. *Fac. Col. No 89. p. 200.*

See Davidſon againſt Elcherſon, Fac. Col. 13th January 1778, No 1. p. 1. regarding the *ſitus* of bank notes, *voce* FOREIGN.

July 1801. There is at preſent in dependence, this queſtion, Whether an extraordinary dividend, termed a *bonus*, declared by a Bank, belongs to the liferenter or the fiar of bank-ſtock? Irvine, &c. againſt Houſton; which will be reported under the title LIFERENTER.