

bill void, and its being afterwards sustained, was chiefly on this medium, that the debtor was alive, and did not disown her having authorized the notaries to sign for her.

The Court sustained the objections to the bill. See This case, *vide* WRIT.

A.G. James Dundas.

Alt. John Dalrymple.

Fac. Col. No 20. p. 33.

1795. January 27.

ARCHIBALD GRAHAME against WILLIAM GILLESPIE, and Company.

ON the 24th October 1791, William Gillespie and Company, in consequence of a consignment of goods made in their hands, accepted a bill, holograph of William Robb, in the following terms :

L. 58: 10s. Sterling.

Glasgow, 24th July 1791.

Six months after date, pay to us or order, at the shop of Mr Andrew Sibbald, the sum of Fifty-eight pounds ten shillings Sterling, value received from

(Signed)

DAVID ROBB & Co.

To Messrs William Gillespie and Co.  
linen-printers, Anderston.

William Robb afterwards increased the sum in the bill to L. 458: 10s. by inserting the figure '4' between the 'L.' and the '5' at the top of the bill; drawing a score through the word 'or' at the end of the first line; adding the words 'or to our' at the beginning of the second; and the words 'Four hundred &c' at the beginning of the third; all which he was enabled to do, in consequence of the blank left betwixt the 'L.' and the '5'; and of there being no writing on the stamp. The fraud was so well executed, that it could scarcely have been discovered, unless by a person aware of it; who might, on a narrow inspection, have perceived, that the words added were written a little differently from those which followed them, and not quite in the same line.

On the 29th October 1791, William Gillespie and Company, in consequence of a second consignment of goods, accepted another bill for L. 58 Sterling, dated 29th July 1791, payable six months after date. This bill was written, and its amount altered to L. 450, by Robb, in a similar manner with the former. The fraud, however, was not so well executed; in particular, the word 'four,' which in it was inserted at the end of the second line, had a very crowded appearance.

Both bills were written upon shilling stamps.

These bills, thus altered, were discounted by William Robb with Archibald Grahame, cashier for the Thistle Bank at Glasgow; who, having threatened to

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The sum in a bill was fraudulently increased after the bill was accepted. The alteration was apparent *ex facie*. The bill was found not actionable even for the original amount.

Blanks were left in a bill, at the time of accepting. The drawer afterwards, was, by means of them, able to increase the sum, without giving the bill a suspicious appearance. The acceptor found liable to an onerous indorsee for the increased value.

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charge Gillespie and Company for payment of them; they raised a suspension, in which they offered to prove, that it was the general practice not to write upon the stamp, and further

*Pleaded, imo*, When a document of debt is altered by forgery, or vitiation; action will not be sustained on it, even to the extent for which it was really granted; because, after the alteration, it affords no legal evidence of its former state; Termly Reports, vol. iv. 1791, Master, &c. against Miller; Fount. v. 2. p. 751. 9th July 1712, Lawrie against Reid, *voce* PROOF. The charger must therefore prove his debt *aliunde*, and bring a regular action for constituting it.

*2do*, At any rate, the acceptor cannot be liable beyond the original sum. The obligation of the granter of a bill, as of any other writing, is founded entirely on his own consent. There is only this difference between them; that the former is understood to consent to pay the amount of the bill, as at the date of accepting it; without stating any exceptions which do not appear from the bill itself.

Every time a bill is indorsed, a new transaction takes place between the indorser and indorsee; by which the former binds himself, that the amount of the bill, as at the date of the indorsation, shall be paid. But to this transaction the acceptor is no party; and the measure of his obligation cannot be affected by it. To entitle the indorsee to operate payment from him, it must be established, that he consented to pay it. In general, his subscription is sufficient to fix this obligation against him. This, however, will not always hold. The bill may be palpably vitiated or erased; or, as in the present case, words may have been added to it, after he has signed it. In such cases, the ingenuity of the fraud, or the difficulty of detecting it, cannot vary the question. Indeed, the objection to the bill may not be at all perceptible on the face of it; it may have been extorted by force or fear; 6th December 1787, Wightman against Graham, (*infra, h. t.*); or granted by a person incapable of consent.

After the acceptor returns the bill to the drawer, he has no more controul over it, but the indorsee may make proper inquiry before advancing his money; and if he neglects to do so, as the acceptor and he are *in pari casu* in every other respect, it is he who should suffer for the omission.

*Answered, imo*, It is acknowledged, that the subscription of the acceptor is genuine; and that the rest of the bill is in the hand-writing of the drawer; and there is evidently no rasure made; nor a single letter nor word put in place of another. There being therefore no forgery, or vitiation, in the present case, the law with respect to forged or vitiated writings, does not apply.

A forged deed is altogether null, because it is not the deed of the person against whom the forgery is committed; and a vitiated deed affords no evidence of its original state; whereas, in the present case, there is merely an addition made to a true bill; and there can be no reason, why it should not be supported to its original extent.

*2do*, But farther, as the acceptor of a bill agrees to subject himself to the consequences of his subscription; and, as bills, like real rights, cannot be affected by

exceptions, which do not appear *ex facie* of them; when a bill, liable apparently to no objection, comes into the hands of an onerous indorsee; in consequence of its being delivered by the acceptor into the hands of the drawer; it will be good against the former, although it may have been fraudulently obtained from him; or deposited with the drawer, in trust.

In the present case, the fraud has been committed by means of an addition made to the bill; but suppose there had been subjoined to it a declaration, that it should not be payable till the death of the acceptor; if the part of the paper containing this addition had been torn off, the acceptor would have been obliged immediately to pay its contents to the indorsee. If the bill had been totally blank when the acceptor adhibited his subscription to it; he must have been held to have given the drawer a discretionary power in filling it up. The same would have been the case, if the bill had been complete, except as to the sum; or if a part of the sum had been left blank, with the intention of enabling the drawer to enlarge it at pleasure. Now, since blanks were left in the present case, sufficient to allow the fraud to be committed, without suspicion; it can make no difference, in a question with an onerous indorsee; that it was not intended or imagined by the acceptor, that any improper use would be made of them. No precaution on the part of the indorsee would have enabled him to detect the fraud; while the acceptor, by writing on the stamp, or drawing lines across it, might have prevented the possibility of its execution. It would be extremely dangerous, if acceptors and indorsers were not liable for the consequences of blanks carelessly left by them.

*3<sup>tho</sup>*, The ante-dating of the bill is of itself sufficient to subject the suspenders. By that measure, the chargers were deceived into a belief, that Robb was so little distressed for money; that he could afford to allow good bills to lie by him for three months, without making use of them. Indeed, it was owing to this alone, that Robb was enabled to commit the fraud. The bills are written upon shilling stamps, and in July 1791, (the date they bear), bills to any amount might be written upon a stamp of that value; but before October 1791, (the real date of the transaction), in consequence of an alteration in the stamp laws, a bill for a larger sum than L. 100, was ineffectual, if written on a shilling stamp; so that, if the bills had not been ante-dated, the charger, on that account alone, would have refused to discount them.

*Replied*: It can easily be proved, that, prior to the frauds alleged to have been committed by Robb; it was a general practice, even among the most cautious people, not to write upon the stamp; and no acceptor, however circumspect, would have hesitated at signing a bill with such a blank; or thought of drawing lines across it. The suspenders, therefore, were guilty of no fault; whereas, the charger, by proper attention, might have discovered the fraud.

The practice of ante-dating bills is very common, and perfectly harmless. It has been introduced, from its being customary, to grant bills for real transactions, payable in six months after date; and because bankers will not discount them till

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within three months of the term of payment. To them, however, the date of the transaction is of no consequence; provided the names on the bill be good; and the term of payment near. The antedating the bills could not deceive the charger as to Robb's credit; because, though they had been granted of their nominal date, they could not have been discounted before their real one.

The alteration in the stamp-laws cannot affect the present question; because, after it took place, a shilling stamp continued to be the proper one for the sum for which the bills were actually accepted.

THE LORD ORDINARY reported the cause on informations.

*Observed on the Bench:* The defences of extortion by force or fear, of forgery or vitiation, are good against onerous indorfees; because bills liable to such objections want the consent of the granter. The deed is equally a forgery, when additional words are inserted, as when the subscription is counterfeited.

But when the acceptor of a bill delivers it to the drawer, containing blanks, which enable the latter afterwards to increase its amount, without giving it a vitiated or suspicious appearance; the acceptor must be presumed to have consented to the alteration; in the same manner as he would be held to have given a discretionary power to the drawer, in filling up the sum, if the blank had been total.

The practice as to writing or not writing on the stamp, is by no means uniform. The leaving a blank can give no room for fraud, except where the sum in the bill immediately follows it. A proof even of uniform practice of leaving the stamp blank, in bills where this is not the case, would be of no consequence.

The fraud on the first bill is so well executed; that a person not aware of it, could not have discovered it; and as the loss must fall either on the onerous indorsee, or on the acceptor; it must be borne by the latter, to whom a certain degree of negligence in leaving the stamp blank may be imputed.

The second bill, however, has a crowded and suspicious appearance. The charger ought not to have discounted it; and must therefore bear the loss. The charge on it may however be sustained to the extent of the original sum; because there arises from the proceedings in the cause, what is equivalent to a judicial acknowledgement, that so far the debt is a just one.

The Court in general did not lay much weight on the antedating of the bill; though it was mentioned as a circumstance, which enabled them to apply the general principle against the acceptor with less regret.

THE LORDS (20th November 1794) by a considerable majority, 'Found the letters orderly proceeded, so far as concerns the bill for L. 458 : 10s. Sterling, charged on; and with regard to the other bill charged on, for L. 450, found the letters orderly proceeded, to the extent of L. 50 Sterling; and suspended the charge for the remaining L. 400 Sterling.'

A petition for Archibald Grahame, reclaiming against this judgment, in so far as it suspended the charge, was (9th December) refused, without answers.

A petition for Gillespie and Company against the remaining part of the interlocutor, was followed with answers; upon advising which, the Lords suspended the letters *simpliciter* as to the bill for L. 450.

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Lord Ordinary, *Esqgrove.* For the Suspenders, *Dean of Faculty Erskine, Tait, Turnbull.*  
 Alt. *Rolland, Arch. Campbell.* Clerk, *Pringle.*  
 D. Douglas. *Fol. Dic. v. 3. p. 76. Fac. Col. No 152. p. 345.*

The Court, at the same time, determined several other cases upon the same grounds.

1793. February 25.

The CARRON COMPANY against ALEXANDER MUIRHEAD,

GEORGE SCHAW and Alexander Muirhead, granted the following promissory-note to the Carron Company:

‘ Carron, 11th September 1793.

‘ We, Alexander Muirhead, tenant in Hilton of Gowie, and George Schaw, tenant in Carmuir, jointly and severally, promise to pay to Carron Company, or their order, at Carron-office, the sum of Fifty pounds Sterling, by regular instalments, of three pounds and three shillings per month, the value of the said fifty pounds being delivered to us in three horses and carts.

‘ (Signed) ALEXANDER MUIRHEAD.  
 GEORGE SCHAW.

‘ L. 50 Sterling.’

The two first instalments were paid by Schaw; but the third not being paid when due, the Carron Company protested the note, and gave the obligants a charge of horning.

Muirhead, in a suspension, maintained, That the writing, which was the foundation of the charge, could not be considered as a bill or promissory-note; and consequently was neither probative, nor could be the foundation of summary diligence.

*Pleading*: A promissory note, entitled to the statutable privileges, is a writing short and simple in its form; containing an obligation to pay a sum of money at a precise day; and capable of being indorsed from hand to hand, February 1721, Viscount of Garnock, No 5: p. 1401. But the writing in question is complex, both in its form, and in the nature of the engagement undertaken by it. The small sum of L. 50 is split into sixteen different instalments. It does not specify the day or month on which the first instalment is payable; and, supposing it did, after being protested for payment of one instalment, and the protest registered, it could not be indorsed for the rest; it being a settled point, that no obligation, on which a decree of registration has been taken, can be conveyed by indorsation.

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It was made a question, whether a promissory-note, payable by instalments, has the statutable privileges of bills? The Court did not decide the general point; but turning the decree into a libel, gave decree for the sum in the note.