

No 54.

Besides, if writings like the present were to have the privileges of bills, the use of bonds of annuity, and other permanent securities, possessed of the legal solemnities, would be wholly superseded.

*Answered*: The involved narrative of the note is no objection to it; Forbes on Bills of Exchange, p. 50.;\* 21st February 1738, Trotter against Shiel, No 7. p. 1402.; nor ought it to be rejected, because it is payable by instalments; Bacon's Abridgement, vol. iii. p. 606. A drawee may accept a bill for a smaller sum than that contained in it, or at a longer day; Beawes' *Lex Mercatoria rediviva*. p. 460.; Cuninghame, p. 35.; Forbes, p. 72.;\* Kyd, p. 49, 50.; which is precisely the same with accepting a bill payable by instalments; as he may afterwards accept it for the remainder, payable at a more distant period. Although the precise days of payment are not specified in the note, there is no difficulty in discovering them; and a bill or promissory-note need not be conceived in any settled form. Neither would diligence used, for payment of the first instalment, prevent its negotiability for the others; as each must be considered, *quoad hoc*, as constituting a separate bill, capable of separate negotiation. Nor is there any ground to fear, that sustaining this promissory-note would have the effect of superseding bonds of annuity and other permanent securities; as bills, unless payable within three years at most, have no privilege; Rem. Dec. v. 1. No 55. p. 105. January 1725, Lefly against Nicholson, *voce* HUSBAND and WIFE.

THE LORD ORDINARY reported the cause.

One Judge was against supporting the promissory-note. It was also observed, that supporting notes payable by instalments, might, on some occasions, afford room for evading the stamp-laws. But the Court, in general, seemed to think, that the note lay under no legal objection. As there was, however, some difference of opinion on the question of law; while the Bench were unanimous that the sum charged for was a just debt against Muirhead; they waved the determination of the general point, by turning the decree into a libel; and thereafter gave decree against him for the sum contained in it, with expences.

Lord Ordinary, *Abercromby*. A. & J. Clerk. Alt. Mat. Ross. Clerk, *Sinclair*.  
R. Davidson. *Fac. Col. No 206. p. 489.*

No 55.

Action refused on a bill where the date appeared *ex facie* to have been altered, though it did not appear by whom, or for what purpose the alteration had been made.

1796. July 1.

WILLIAM MURCHIE against JOHN MACFARLANE.

WILLIAM MURCHIE, on the 4th July 1793, remitted to the agents for the Paisley Union Bank, at Newton-Douglas, to be placed to his credit, when paid, a bill drawn by John Caven, accepted by William Alexander, and indorsed by Caven, John Crosbie and John Macfarlane, dated 17th June 1793, and payable two months after date. On the 5th July, the agents for the Bank wrote to Murchie, acknowledging receipt of the bill, and mentioning, that it would be payable on the 20th August; and it was accordingly marked, '17th-20th August,' by one of the clerks.

The bill was protested for non-payment, on the 20th August, and the dishonour immediately intimated to all concerned; and particularly to Macfarlane; who, having afterward been charged for payment of it, raised a suspension; in which, *inter alia*, he stated, That the bill, when he indorsed and returned it to the acceptor, for whose accommodation it was executed, was dated 7th June: That the figure '1' was, *ex facie* of the bill, an after operation, performed perhaps by the acceptor, in order to postpone the term of payment, or, by the charger, at his desire; and he proposed, that all the parties, concerned in the bill, should be examined, in order to explicate the fact.

From this statement, he inferred, that the letters should be suspended: *1mo*, Because, according to its proper date, the bill had not been duly negotiated. *2do*, Because the bill being *ex facie* a vitiated document, no action could be sustained upon it; 4th vol. Termly reports, 1791, Master and Others against Miller; unless, upon the principle of the decision, 27th January 1795, Gillespie against Graham, No 53. p. 1453., the charger could establish, both that he was *in bona fide*, to receive the bill as a true document, (which, from the obviousness of the interpolation, he could not); and that the mistake had been occasioned by some fraud or negligence of the suspender, which was not alleged.

The charger, on the other hand, admitted, that the figure '1' had a different appearance from the rest of the bill; but he objected to the competency of the examination proposed; and contended, that, in the circumstances of the case, the alteration could not affect the validity of the bill, in a question with him, an onerous indorsee: That a vitiation in a document is presumed fraudulent, and renders it null, only where the holder of it can reap some benefit from the alteration; (See PRESUMPTION, VITIATED WRITS.) but that from its being established, that the bill bore its present date so early as the 4th July; a period at which the charger could have no interest to make the alleged alteration; the sole effect of which was to postpone the term of payment; it must be presumed to have been made by some of the obligants in the bill before they quitted possession of it.

THE LORD ORDINARY sustained the reasons of suspension; and, upon a reclaiming petition, with answers, the Lords almost unanimously 'adhered.'

Lord Ordinary, Swinton. For the Charger, Hay. Alt: Turnbull. Clerk, Home.  
D. Douglas. Fac. Col. No 228. p. 530.

\*\*\* A case, of very similar circumstances, was decided by Lord Kenyon in the same manner, in December 1801. See APPENDIX.

\*\*\* See Shepherd against Innes, voce APPRENTICE, p. 589.