

of the bill not to have been implemented; and a bill bearing value received is a fungible, and like a bag of money, and no exception is competent against it.

REPLIED,—This were good among strangers; but this bill being made payable to the drawer's brother, the narrative can never prove *inter conjunctos*, but, by the Act of Parliament 1621, must be instructed *aliunde*.

DUPLIED,—The Act of Parliament takes no place in bills of exchange, which, for expedition of commerce, do, *fictione juris*, pass from hand to hand, like ready money, their currency being the life and foundation of trade.

The Lords considered that bills must not be fettered and clogged with municipal statutes, but must be regulated by the *jus gentium et lex mercatoria* received in the trading places of Europe; but thought, if it had borne only for value in account, they would have, in this case betwixt two brothers, caused him prove the onerous cause *aliunde*; at least to have given some probable evidences thereof, though not amounting to a full probation; as they did lately in the case of a bill of exchange, bearing for value to account, betwixt *Wightman* and *Cuthbertson*: But here, it bearing expressly value received, the Lords would put them to no farther proof for instruction of the onerous cause, unless they would convel and redargue the verity of that narrative by his oath. All the hazard is, Bankrupts, instead of granting bonds to their nearest relations, may now give them bills of exchange.

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1701. February 13. MARGARET POLLOCK *against* ROBERT SPREULL.

MARGARET Pollock, as executor to John Spreull her husband, pursues Robert Spreull, in Drumgrain, for 100 merks contained in his bond.

ALLEGED,—The bond was conditional, and not payable till he attained the age of twenty-one years complete: and she replying, that he was past his minority before his death, and this being admitted to her probation, she adduced two witnesses, who deponed, That they saw him at Bothwell Bridge in June 1679, and though they knew not precisely his age, yet he was then between a lad and a man. And, for his death, she produced his testament, confirmed in 1697, bearing that he had deceased in 1695.

This probation coming to be advised, it was CONTENTED for the widow,---That the witnesses' conjecture of his age in 1679, as being then betwixt a lad and a man, must be fixed at his *plena pubertas* of eighteen; and so, in 1682, he was twenty-one; and from that year it must bear annualrent, conform to the bond.

ANSWERED,---That was a very uncertain standard and measure; for some at twelve or fourteen will look more like a man than another of lesser growth at eighteen. And as to the assertion in the testament, that he died in 1695, that was no ways probative nor authentic; for it is known the Commissaries take no probation of the party's death, but insert it on the up-giver of the testament or inventory, their word. Yet the testament would prove that he was dead at the time it was offered to be confirmed.

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