

## P R O M I S S O R Y   N O T E .

1708. *January 29.*

Mr ALEXANDER ARBUTHNOT, Factor to Messrs Burgh and Arnold, Merchants  
in London, *against* WALTER SCOT, Merchant in Kelso.

**W**ALTER SCOT having by his note, obliged himself to pay to Messrs Burgh and Arnold, or order, L. 15 Sterling, at London,<sup>s</sup> or at Edinburgh, with the current exchange, and the note being indorsed to Mr Arbuthnot, who pursued Scot for payment; the LORDS found, That it was not of the nature of a bill of exchange, nor did partake of the privileges thereof, but was a simple ticket, in respect there was not a drawer and acceptor; and therefore found the same null and not probative for want of the names and designations of writer and witnesses.

No 1.

*Fol. Dic. v. 2. p. 211. Forbes, p. 233.*

\* \* \* Fountainhall reports this case :

WALTER SCOT, merchant, in Kelso, grants an obligation to Messrs Burgh and Arnold, citizens in London, and their order, L. 15 Sterling, payable in the city of London, six months after its date, or at Edinburgh with exchange. This note is indorsed to Alexander Arbuthnot, merchant in Montrose, who pursuing Scot for payment, he objected the bond was null, neither designing writer nor witnesses, and being since the 5th act of Parliament 1681, is not suppliable now by a condescence; and though they offer to prove the verity of his subscription by his oath, yet that is noways relevant, unless they likewise refer the verity of the debt, and that it is yet resting owing, to his oath; and the same having lately occurred betwixt William Chatto and Park, an Englishman, the LORDS found the ticket null. *Answered*, This obligation was of the nature of a bill of exchange, which requires none of those solemnities of writer and witnesses, but are simple writs regulated *jure gentium*, and the custom of merchants, both the parties here being such; and it is indorsed

No 1. on the back without any formal assignation, which shews the parties looked upon it as a bill. *Replied*, This note has neither the stile of a foreign nor inland bill, and could never have been protested and registered for not acceptance; and though it mentions the same being payable to the party or his order, and with exchange, yet many bonds run in that same mixed kind of stile. THE LORDS observed, That bills are exposed to much hazard of forgery, therefore their privileges were not to be extended, and found this was only a ticket, and could not claim the privileges, either as to the want of solemnities or summary execution, that bills have; only, it appearing to be all of one hand-writ and contexture, they ordained the parties to be heard if it was holograph, in which case it would be probative, though it wanted witnesses, if they offered to prove it was holograph.

*Fountainhall, v. 2. p. 424.*

1708. February 12.

Mr ROBERT BUNDIE, Merchant in London, *against* JOHN KENNEDY of Culzean.

No 2.

JOHN KENNEDY of Culzean, having by his note promised to pay to David Crawford, or order, £. 35: 11s. Sterling, the 1st of September 1706, value received by him; and the said note being indorsed to Mr Robert Bundie, who pursued Culzean for payment; the LORDS found the said note was not a bill of exchange, and therefore the sum therein was compensable by the indorser's debt.

*Fol. Dic. v. 2. p. 211. Forbes, p. 239.*

\* \* See what Lord Fountainhall says of this case, in the case which follows.

1711. December 6.

WILLIAM KING, Merchant in Glasgow, *against* ROBERT ESDALE, Merchant in Dumfries.

No 3.

In the suspension of a charge at the instance of William King against Robert Esdale, for payment of £. 25 Sterling, and interest thereof, which Robert Esdale, by his note, 2d December 1709, promised to pay upon the first of May then next, to William King, or order for value received; the LORDS found, That the English statute of 3. and 4. A. c. 9. giving the like remedy upon promissory notes, as is now used upon bills of exchange, for the space of three years, though made perpetual by the 7. A. c. 25. an act of the British Parliament since the Union, doth not extend to promissory notes in Scotland; because the British statute doth only make the former, which before was a temporary law of England, to be a perpetual law thereof; and the British sta-