

No 69.

To all which it was *answered*: That an accepted bill was a complete writ, *in suo genere*, as much as a bond duly subscribed with witnesses attesting. By the act 20, Parl. 3. Charles II. the date of a bill is probative, to make annual rent due thereon, even with respect to third parties; and no reason can be given, why the date of a bill should be probative in one case, and not in another: That if bills do not prove their dates, they, by the same argument, can prove nothing at all: That there was no manner of analogy betwixt bills and holograph writs; for holograph writs prescribe in twenty years, by express statute; but, Sir George Mackenzie observes, upon that act, that the Parliament absolutely refused to limit bills to that time. Holograph writs prove not their dates against any third party; and, if bills were no better than holograph writs, with regard to their dates, they could not compete with an assignee, or an inhibitor; nor in many other cases; which would be altogether absurd; and was never before pleaded. In fine, If bills did not prove their dates, they would be rendered ineffectual, and of no use in commerce.

THE LORDS found, That accepted bills prove their dates against the acceptor's heirs. See This case by Lord Kames, *voce* PROOF.

Reporter, Lord Royston. A&C. Arch. Stewart, jun. Alt. Ja. Boswell. Clerk, Hall. Edgar, p. 185.

No 70.

Acceptance absolute, and cannot be clogged with any condition.

1781. November 21. COLIN CAMPBELL of Carnbeg against JAMES CAMPBELL.

DONALD CAMPBELL of Balinaby, a captain in the Argyleshire regiment of Highlanders, being ordered upon foreign service, and waiting to embark at Greenock, found himself unable to discharge some pressing demands which were made upon him. James Campbell, however, agreeing to advance the money, Balinaby drew two bills, in his favour upon Colin Campbell of Carnbeg, to whom he had already disposed his whole estate, under a power of redemption.

James sent the bills by express to Ilay, where Carnbeg resided, and he, perceiving that his friend's situation would admit of no delay, immediately accepted them; but as he had no effects of the drawer in his hands, instead of returning them to James, he transmitted them to his own agent at Greenock, with orders not to deliver them, unless Balinaby would agree to give up his power of redemption; and, at any rate, to keep them in his hands till that gentleman *should be clear away for America*. At the same time, he wrote to James, informing him of what he had done, and referring him to his agent for the conditions of his acceptance.

Balinaby having absconded before the express returned from Ilay, it became impossible to procure his consent to the terms proposed. The bills, however, were forced from Carnbeg's agent by a decree of the sheriff; and being afterwards indorsed by James, the effect of acceptances, *so qualified*, came to be considered, in a reduction of the Sheriff's decree, brought by Carnbeg, and in an action against him, for payment, at the instance of the indorsee.

Pleaded for Carnbeg : To impose an obligation upon a person without his consent, is adverse to the first principles of justice. Every man is entitled to chuse whether he will oblige himself or not, and is at liberty to adject what conditions he pleases to his obligation.

That a bill, therefore, may be accepted *conditionally*, is clear ; and, among merchants, nothing is more common than such acceptances ; Harcarfe, p. 36. Postlethwait, *voce* Acceptance : Law of Bills of Exchange, p. 30, 31. It has been equally well understood, since the point was *settled* by Lord Hardwicke, in the case of Lumley and Palmer, that a bill may be accepted *by letter*, or even *verbally* ; and if so, a condition may, in the same way, be adjected to the acceptance.

When the bills in question arrived at Ilay, Carnbeg was under no obligation to accept them ; because the subjects disponded to him, under reversion, being already more than exhausted, he had no effects belonging to Balinaby in his hands. His accepting the bills, therefore, was a voluntary act : He was entitled to propose his conditions ; and if those conditions were not complied with, he had a right to with-hold his acceptance.

On the other hand, it may be admitted, that James Campbell, the holder of the bills, was not bound to take any but a simple unqualified acceptance ; and if the terms proposed were not agreeable to him, he might have held the bills as *refused*, and protested them for non-acceptance. But this was the farthest he could go ; and he was not entitled to avail himself of the acceptance procured from Carnbeg, while, at the same time, he rejected the condition of that acceptance.

Had the parties ~~been present together on this occasion~~, it is evident that James Campbell must either have taken the acceptance qualified, in the manner proposed, or he must have gone without it ; and although circumstances rendered it necessary that Carnbeg should sign the bills as acceptor, before he had an opportunity of knowing whether or not his terms would be agreed to, this makes no difference in the rights of parties. It was incumbent on James to have signified his disapprobation *immediately* to Carnbeg's agent. In that case, he might at once have got up his bills, upon agreeing to cancel Carnbeg's subscription, which every acceptor is entitled to do before the bill goes out of his possession ; Forbes on Bills, c. 5. § 13. Postlethwait, l. c. ; and which ought to have been done here, as the holder was unwilling to take a conditional acceptance.

Answered for the defenders : It is not of the smallest consequence, whether Carnbeg had value in his hands or not ; for, by accepting the bills, he unquestionably became liable to the onerous holder of them. Carnbeg was, no doubt, at liberty to have accepted the bills, or to have refused them, as he pleaded ; but he had no right, without the holder's consent, to adject any condition to his acceptance. But, in fact, the bills bear a *simple* acceptance, unqualified by any restraint, or exception, whatsoever ; and such acceptance, being once adhibited to a bill, cannot afterwards be either altered or revoked ; Law of Bills of Exchange, p. 35. It was therefore incompetent for Carnbeg, after having accepted the bills

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in question *simply*, to qualify his acceptance with the conditions contained in the letter to his agent. It was equally incompetent for James Campbell to have agreed that the acceptance should be cancelled on any account. He had no right to *discharge* Carnbeg, who, by accepting the bills, constituted himself the *proper* debtor, and rendered Balinaby's obligation, as drawer, only *subsidiary*.

But, at any rate, Carnbeg was culpable in retaining the bills, or in directing his agent to keep possession of them, till Balinaby should be gone. He ought to have determined positively, either to honour or to dishonour the draughts. Had he returned them unaccepted, James Campbell might immediately have had recourse against the drawer; and, by withholding them improperly, Carnbeg became answerable, even although he had not accepted.

Observed on the Bench: The obligation of a bond, already signed, may be qualified before delivery: But the acceptor of a bill is not entitled to retain it an hour, or to adject any condition to his acceptance, without the holder's consent. It is the holder's document of debt against the drawer, and must immediately be returned to him.

The COURT adhered to the Lord Ordinary's interlocutor, 'repelling the reasons of reduction in the action at Carnbeg's instance, and decerning against him in that, at the instance of the indorsee.'

Lord Ordinary, *Alva*.Act. Blair & A. Abercromby.
Clerks, Tait & Home.

Alt. Cullen.

Fol. Dic. v. 3. p. 77. Fac. Col. No 5. p. 10.

S E C T. X.

Effect of Fraud on the part of the Drawer; and of False Description of the Value.

1701. November 14.

COWAN against DOUGLAS.*

No 71.
Where it was alleged that a party had been ensnared to accept a bill; in a furthcoming, at the instance of a creditor of the drawer, an explication of the fact was allowed.

COWAN being a creditor to Walter Ewen, arrests in the hands of Robert Douglas, and John Ewen his debtor's brother; and the said John Ewen having deponed in the furthcoming, acknowledges, that certain bills, drawn by his brother, payable to him, were for his brother's behoof; and, particularly, a bill for L. 100 Sterling, drawn upon, and accepted by the said Robert Douglas; whereupon he insists against Douglas for payment of the sum in his accepted bill, which was instructed, by John Ewen's oath, to be for the behoof of the common debtor.

It was *alleged* for the defender: That he was over-reached and ensnared to accept the bill, in so far as he having employed Walter Ewen, then in London, to buy certain merchandise for his use; and having engaged himself to the merchants who sold the goods, the said Walter draws a bill for the value of the goods,