

\*.\* See Swan *against* Swan, Fac. Col. 30th June 1786, *voce* OATH OF PARTY.

See Brand *against* Anderfon, 9th February 1711, *voce* BLANK WRIT.

See Neilfon *against* Bruce, Kilkerran, p. 70. *voce* PACTUM ILLICITUM.

See Thistle Bank *against* Leny, *voce* PROOF.

See Campbell *against* Graham, p. 1120.

See Alifon *against* Crawford, *voce* WRIT.

## S E C T. IX.

## Acceptance.

1702. June 25.

MAN *against* WALES.

IN a reduction, upon the act 1696, of a disposition granted by a creditor, as in prejudice of the pursuer, a prior lawful creditor, it was *objected*, That the pursuer was not a prior lawful creditor, being creditor by a bill drawn the same day the disposition was granted; and accepted without a date. *Answered*, The acceptance must be presumed of the same date with the bill; being among parties living in the same town.—THE LORDS refused to sustain this presumption.—(See The particulars, p. 1006, 1083, and 1183.)

*Fol. Dic. v. 1. p. 97.*

No 68.

Acceptance not presumed of the date of the bill.

1725. July 8.

Mr JOHN KENNEDY of Kilhenzie, *against* Captain HUGH ARBUTHNOT of London.

MR KENNEDY raised a process against Captain Arbuthnot, as heir to Kennedy of Balterfan, for payment of three bills accepted by Balterfan, to which he had right.

It was offered, *in defence*, for Mr Arbuthnot—That he being an heir, the bills did not prove their dates against him; but were presumed to have been granted on death-bed, in the same manner as holograph writs; and, therefore, he was not liable, unless the pursuer could instruct, that the bills were accepted when Balterfan was in *liege poustie*, or sixty days before his death:—And the defender *argued*, That, by express statutes, all writs of importance should bear writer's name and witnesses; otherwise they should be void; and that such kind of obligations ought not to afford action against an heir, unless it could be proved, that they were owned by the acceptor, and seen before he was on death-bed; which appeared evident from the parallel of holograph writs, which have no effect against an heir, unless they are proved holograph; and, of a date, before the granter came on death-bed: That there was greater opportunity to improve a holograph writ than a bill, which, for ordinary, has no other attestation, but the simple signing of the debtor's name.

No 69.

An accepted bill found to prove its date against the acceptor's heirs.

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.