

BANK.

1728. July 11.

ROYAL BANK *against* BANK of SCOTLAND.

No 1.

IN a case betwixt the two banks, it was found, that neither horning, inhibition, nor arrestment, were competent against the Bank of Scotland, upon their notes or tickets, the diligence being done *in emulationem*.

Fol. Dic. v. 1. p. 65.

1749. February 24.

Competition HEW CRAWFURD, Clerk to the Signet, with The ROYAL BANK.

No 2.

HEW CRAWFURD clerk to the signet, wanting to transmit L. 20 Sterling to William Lang, merchant in Glasgow, inclosed in a letter an Old Bank note for that sum, which was sent by post; and, for security, Mr Crawford not only took a note of the number, but also wrote his name upon the back thereof. This letter being lost by some accident, an advertisement was forthwith put in the newspapers, that the note was amissing, describing the sum, number, and all other particulars. The note at last appeared in the hands of the New Bank, and Mr Crawford raise a multiplepinding in the name of the Old Bank.—The New Bank admitting, that the note might have been stolen, *insisted* that they were *bona fide* purchasers; and that such is the nature of money and of bank-notes, which serve the purpose of money, that a *bona fide* purchaser, or possessor, is not subjected to a *rei vindicatio*, because such a claim would be an impediment to commerce.

Bank-notes,
like money,
are not liable
to *vitium*
reale.

Answered for Mr Crawford, Bank-notes have no privilege by the law of Scotland above bills of exchange, other than that they are taken payable to the bearer, which makes them pass from hand to hand without the necessity of indorstation; but which, at the same time, gives them no other privilege than what belongs to every sort of moveable. The bare possession of a bank-note, without consent of the proprietor, will no more transfer the property, than the bare possession of a table or of a chair. Possession, indeed, presumes the consent of the former proprietor: But then this, like other presumptions, must yield to positive proof; and therefore, if the person who vindicates, proves his property, *et quomodo desit possidere*, so as to take off the presumption arising from possession, he must prevail. And the present case is precisely similar to that of a blank bond, while that deed was in fashion: Possession of a blank bond presumed property; but no mortal ever doubted that the true creditor had access to vindicate the same, if he could prove *quomodo desit possidere*. Nay further, even current coin has not this privilege: It is true, if a guinea be stolen, the proprietor cannot vindicate the same, unless he be able to prove his property, *et quomodo*