

JUSTICE-CLERK. It is my wonder that lawyers should have been so ingenious as to darken this point. The case of *Donaldson*, when rightly understood, is against the tradesmen.

On the 9th July 1777, The Lords found that the tradesmen, employed by law, have no preference in virtue of the jedge and warrant.

Act. Ch. Hay, R. Sinclair. *Alt.* R. Blair.

Reporter, Covington.

1777. *January 16, and July 25.* DAVID ELLIOT *against* HUGH M'KAY.

BILL OF EXCHANGE.

Privileges, when lost. Can Compensation be pleaded against an Onerous Indorsee for a Debt of the Drawer eighteen months after the Bill has become due, when no Diligence has been used upon it?

[*Fac. Coll. VII. 459; Dict., App. I., Bill of Exchange, No. II.*]

MONBODDO. The decision 1762, *Scougal against Ker*, cannot be got over.

KAIMES. I cannot suppose that a bill payable in six months is a bill, properly so called: it is no other than a common security. [This was a crude opinion.]

JUSTICE-CLERK. This bill was sent to Glasgow, in order that it might be discounted by any person who chose to pay value for it; and value was accordingly paid. Had the indorsee proceeded to diligence, the defence of compensation would not have been good. How can it alter the case, that the indorsee was so indulgent as to give the debtor some further time? When a bill lies over for any considerable time, the presumption is that the purchaser takes it as a security, liable to all objections, and not as a bag of money.

PRESIDENT. When a bill remains in the hands of the drawer for a considerable time, it loses its privileges. That the bill has been indorsed makes no difference; for the acceptor knew nothing of the indorsee, and he may have acted accordingly, by paying money to the credit of the drawer.

GARDENSTON. Compensation is proponable, and there is no danger from such doctrine. Why should the indorsee be in a better condition than the original drawer? For that there is neither reason nor expediency. The bill continues a good document of debt, but it has no extraordinary privileges.

BRAXFIELD. Compensation is admissible after the lapse of six months, for then the extraordinary privileges of bills are gone. It makes no difference that the bill was indorsed before the term of payment. Bills are bags of money, while used for their proper purpose. If the fact of indorsation should alter the case, no plea that a bill was compensated could ever take place as long as the bill continued actionable.

ELLIOCK. Every man who puts his name to a bill must know that it may be indorsed.

COVINGTON. If bills, payable at six, or even twelve months, were not to be considered as formal bills, it would be a dangerous decision to the commerce of this country. [This in answer to a loose expression of Lord Kaimes.] It is a mistake to say that a bill, after six months, loses all its privileges, for it is still probative, which such a writing would not be at common law.

On the 16th January 1777, "The Lords found compensation proponable."

Act. Claud Boswell. *Alt.* J. Boswell.

Reporter, Auchinleck.

Diss. Justice-clerk, Alva, Covington, Elliock, Stonefield.

1775. July 25. BRAXFIELD. I am moved by the opinion of the English merchants, who concur in asserting that bills have extraordinary privileges as long as they endure. There is no evidence offered to the contrary.

JUSTICE-CLERK. The case of *Scougal*, on which so much weight is laid, is not like the present case, for *there* the bill was indorsed after it had been twenty-two months due.—[The opinion of the English merchants, on which Lord Braxfield rested, makes no such distinction.] *Here* a bill was sold before the term of payment, in the ordinary course of trade. What reason can there be assigned for inverting the nature of the bill from a bag of money into an exceptionable security, because the indorsee was so indulgent as not to exact immediate payment?

GARDENSTON. I proceed on the supposition of the practice in England. It would be highly inexpedient to put our bills on a different footing from English bills.

COVINGTON. If the interlocutor is adhered to, it would be ruinous to that branch of commerce which consists in bills. If our statutes have given extraordinary privileges to bills in any one case, this implies that in every other case the *jus gentium* remains in force. I do not think that the law of England, as such, ought to be adopted with us; but I consider it as evidence of the *jus gentium*.

PRESIDENT. In England there are peculiar customs and statutes. *They* ought not to be any rule with us; but, in all questions of bills which are *juris gentium*, the practice in England, a great commercial country, aids to show the *jus gentium*. I am now against the interlocutor, because with us a limitation as to bills is established by a late act; and it is expedient that we should be on the same footing with England.

On the 25th July 1777, "The Lords found compensation not proponable;" altering, without a vote, their interlocutor of the 16th January 1777.

Act. Claud Boswell, Ilay Campbell. *Alt.* James Boswell, D. Rae.