

1784. June 18.

JAMES SPENCE *against* WALTER SPENCE.

No 14.

IN this case the Court found, that a writing, though in the proper form of a bill, and though not proved to be false, yet could not, from the circumstances in which it appeared, be sustained as probative, or as a ground of action.

A& H. Erskine.
Stewart.

Alt. M. Ross.

Clerk, *Menzies.

Fac. Col. No 158. p. 247.

See Synopsis relative to this case.

1793. December 18.

The DISPONEES of GEORGE STEEL *against* DAVID WEMYSS.

GEORGE STEEL, on the 16th February 1790, granted to David Wemyss, 'as a consideration for his services and trouble,' a promissory note for L. 500, payable at the following Whitsunday.

In payment of which he, on the 7th June, gave him the following draught, addressed to the Secretary of the Bank of Scotland: 'On sight pay to David Wemyss, or his order, Five Hundred Pounds Sterling, which place to my account, without further advice.'

Neither the promissory note nor the draught were holograph of Mr. Steel, or attested by witnesses.

Mr Wemyss did not present the draught at the Bank till after Mr Steel's death, (24th June 1790), when payment was refused.

The disponees of Mr Steel then brought a reduction of the promissory note and draught.

The services condescended on, as performed to Mr Steel by Mr Wemyss, were, assistance in the general management of his affairs, and particularly of a large farm, which he kept in his natural possession, and which his advanced age, it was said, prevented him from superintending.

The disponees denied that these services had been performed; and further *Pleaded*, Bills and promissory notes are exempted from the solemnities required in other writings, only where they are used as a medium of commerce, which is their proper object. When granted without an onerous cause, or for the delivery of goods, and for the same reason, when granted as a reward for services and trouble, for which the granter was under no legal obligation, they are altogether ineffectual; 13th February 1724, Hutton against Hutton, No 16. p. 1412.; 9th November 1722, Fulton and Clerk against Blair, No 15. p. 1411.; 3d December 1736, Weir against Parkhill, *infra b. t.*; 11th February 1761, Wright against Wrights, Fac. Col. No 20. p. 36. *voce* LEGACY.

The draught is not only liable to the same objection with the promissory note, but it does not create the same presumption of value received. Such draughts are frequently given to servants merely to get money for their masters. They are mandates dissolved by the death of the drawer.

No 15.

A bill or promissory note granted as a reward for services and trouble found effectual. A gratuitous draught on a banker found valid, after the death of the drawer.