

1712. July 16.

ANDREW CHEAP, Brother to JAMES CHEAP of Rossie, *against* JAMES ARNOT of Woodmill.

ANDREW CHEAP having charged Woodmill to make payment of L. 253 : 12s. Scots, with annualrent and penalty, contained in his bond 11th November 1608 ; and of L. 100, with annualrent and penalty, contained in his other bond, dated 27th April 1709 : He suspended, upon this ground, That the charger having received payment of L. 20 Sterling, by a bill drawn by the suspender, 26th February 1709, upon David Harden of Aberuthen, payable to the charger, conform to his receipt on the back of the bill ; that L. 20 Sterling must be imputed *in solutum pro tanto* of the sums charged for, seeing the bill doth not bear value received.

*Alleged* for the charger : Value being presumed to be received in all bills, though not bearing value ; present value is presumed to have been given in this case. Because, *imo*, That is to be presumed, which is most ordinary, L. 114. *ff. de R. 7.* And the ordinary way of dealing in bills is by delivering present value in money or goods. And men of business, when they draw bills payable to their creditors, take receipts of the sums in the bills in part of payment of the debts owing by the drawers ; or qualify the bills, so that the persons drawn upon, shall take such receipts from the possessors : For that otherways, the drawer of the bill should have no security for the sum in the bill, nor instruction that the debt was paid. It would mar commerce, and prove a snare to merchants and others, knowing no such distinction of bills bearing value, and those not bearing value, if the latter should be interpreted in satisfaction of anterior debts.

*Answered* for the suspender : It is indeed ordinary to give present value for bills, and value received is implied betwixt persons no otherways concerned together but by that single bill : But, in the present case, the suspender being debtor *ab ante* to the charger, and giving a bill not bearing value received, the presumption of present value given ceaseth. The charger would not agree to give the suspender a receipt in part of payment : Because he had a mind to be fully secured, and knew not if the bill would be accepted and paid.

THE LORDS found the sum in the bill founded on by the suspender to be imputable in payment of the bond prior to the date of the bill ; unless the charger prove, by the suspender's oath, That the bill was granted for another cause.

*Fol. Dic. v. 1. p. 100. Forbes, p. 620.*

1715. February 15. MRS AUCHINLECK *against* ENSIGN MILLAR of Mugdrum.

LIEUTENANT DOUGLAS draws a bill upon Ensign Millar, for paying to himself, or order, L. 30 Sterling, as the balance of a stated account betwixt them. This

No 119.

A bill drawn payable to a creditor, not bearing value received of him, understood to be in satisfaction *pro tanto* of the debt, and not that the creditor gave present value for it.

No 120.

An indorsee to a bill is presumed to have given value for it.