

and therefore have not the privilege of bills, but are only as assignations: Nor does the act 1696 give them that privilege. For, *imo*, The act only concerns diligence upon bills, but determines not how far exceptions competent against the cedent, are good against the assignee. *2do*, That act concerns only money bills; for it only extends the act 1681 anent foreign bills, to inland ones of the same nature; but the act 1681 concerns only money bills, as is plain from its rubric, narrative, statutory part, &c. Consequently the act 1696 concerns only money bills also: And therefore the said two acts rather argue against the pursuer, thus, That however our laws have justly given privilege to money bills, yet the legislature never thought it useful or necessary to allow the same privilege to precepts for goods. To the second, *answered*, That this bill wants an essential for giving it the privilege acclaimed, viz. that it is not a money bill, and no others are favoured by the law.

No 2.

THE LORDS found, That the bill not being for money, but a salt bill, and not protested, nor diligence done thereon for payment, during the space of five years and some months; therefore William Douglas, the indorsee, was only to be considered as a common assignee.

Act. Sir Tho. Wallace.

Alt. Ro. Dundas.

Clerk Robertson.

Bruce, No. 82. p. 98.

1729. November. BRUCE of Poufouls *against* WARK and MAXWELL.

BRUCE accepted a bill to John Wark, dated in the year 1718, binding himself to deliver, on 1st May 1718, a quantity of victual of crop 1717. Bruce brought a reduction of the bill as granted not for money, but for fungibles, and so ineffectual. Lord Drummore Ordinary, Found, the bill being dated in the year 1718, for victual of the crop 1717, and containing obligations that were not transactable by bill, was therefore null.

Christian Wark, and Archibald Maxwell, her husband, as executors of John Wark, defenders in the reduction, presented a petition to the Court, founding on *Lefly* against Robertson, and Douglas against Erskine, the two cases immediately above, as ascertaining that the bill ought not to be held to be null. In answer, it was *contended*, that all obligations conceived in writing ought to have the solemnities requisite by the statutes. That bills of exchange had, by statute, particular privileges; but it was obvious, from the terms of the statutes regarding them, that money only was meant to be the subject of the documents so privileged.

The COURT pronounced an interlocutor, 'Sustaining the bill as a probative writ; but remitted to the Lord Ordinary to hear parties procurators on the presumption of delivery, with power to determine or report.'

No 3.
Question,
whether a bill
for fungibles
ought to be
sustained as a
probative
writ.

No 3.

Bruce presented a petition, praying the Court to find, that the bill in question was not a probative writ.

This petition was never advised.—Upon what authority, therefore, Lord Kames, in his abridged report of this case, supposes it to have been settled, that ‘ a bill or ‘ precept for the delivery of fungibles is not sustained as a probative writ,’ does not appear.

Fol. Dic. v. 1. p. 95. Session Papers in the Advocates’ Library.

*** See No 8. p. 1403.*

S E C T: II.

Nature of a Bill.

1710. July 14.

MR MALCOLM M’GIBBEN *against* The MANAGERS of the Woollen Manufactory at Newmills.

No 4.

A bill ordering money to be paid out of a specified fund, accepted, ‘ when ‘ the fund ‘ comes to ‘ hand,’ found effectual, and preferable to a posterior arrestment of the same fund.

IN the competition between Mr Malcolm M’Gibben and the Managers of the Woollen Manufactory at Newmills, for sums due to Major General M’Cartney, out of the Equivalent; M’Gibben founded on a bill or precept drawn by the Major-General, 6th August 1700, upon James Ramsay, then paymaster of the regiment of Foot Guards, ‘ ordering him to pay thirty-three pound Sterling out ‘ of his clearings of the months of July, August, September, October, November, and December 1698, in full of his and Hautboies dues from the said regiment, when received.’ On which bill Mr Ramsay wrote, ‘ Accepts when the ‘ clearance comes to my hand;’ and it was intimated to the Commissioners of the Equivalent, 24th June 1707. The Managers of the Manufactory at Newmills, (who had used arrestment in the hands of the Commissioners, upon a registered bond granted to them by the said Major-General for L. 89 : 18 : 4 Sterling) claimed preference to M’Gibben, in respect their debt was unexceptionable; whereas his precept was conditional, payable out of a certain fund when received by Mr Ramsay; and the condition never being purified, could not be considered as an effectual conveyance, albeit it is a good instruction of the debt against the drawer: For the order to pay out of the clearance of such months, was intended to point out the fund of the creditor’s payment, and to free the acceptor from being liable to pay out of any other of the drawer’s effects.

Answered for M’Gibben: The precept does constitute a pure and simple debt against the drawer, though there be a condition adjoined to the acceptor’s payment. *2do*, Its being payable out of a particular fund, implies a virtual assignation thereto; for albeit the bill, in order to M’Gibben’s more conveniency, was made payable by Mr Ramsay when the fund came to his hand; yet the fund itself, though never received by him, must still be liable to that debt. And the bill intimated to the Commissioners of the Equivalent, long before the competi-