

B L A N K W R I T.

S E C T. I.

How far the granting of a Blank Writ Implies Renunciation of Exceptions.

1681. *January.* ROBERT GRANT *against* M^cINTOSH.

No 1.

THE granting of a blank bond found to be a passing from all grounds of compensation competent to the debtor before the date of the bond, but not for those emerging thereafter.

Fol. Dic. v. 1. p. 103. Harcarse, (COMPENSATION.) No 265. p. 63.

1668. *February 27.* DAVID HENDERSON *against* MR ANDREW BIRNIE.

No 2.

MR ANDREW BIRNIE having granted a bond to Alexander Short, blank in the creditor's name, he, for an equivalent cause, delivered the same to David Henderfon, who filled up his name therein, and charged Mr Andrew therefor; he suspended on a reason of compensation, upon a debt owing to him by Short, to whom he delivered the blank bond, for whom he became cautioner before he granted the bond, and paid the debt, partly before, and partly after this bond; so that Henderfon, by filling up his name, being assignee, and Short cedent, payment or compensation against the cedent, before the assignation, is relevant against the assignee. It was *answered*, That, in this case, compensation is not relevant, because the very delivery of a bond, in a blank creditor's name, imports that the receiver thereof may put in any man's name he will, and he may never make use of compensation against him whose name is filled up; otherwise why should the creditor's name have been left blank, which, if it had been filled up, it behoved to have had an assignation, which is but a procuratory *in rem suam*, so that the procurator can be in no better state than the constituent; but the blank makes the person filled up creditor principally.

Found, that compensation could not be objected against a possessor of a blank bond, upon a debt of the original creditor.

THE LORDS found compensation not relevant against a person whose name was filled up in the blank, being a singular successor to him, who first received the bond. See COMPENSATION.

Fol. Dic. v. 1. p. 103. Stair, v. 1. p. 538.

No 2.

** Lord Dirleton reports the same case :

1668. *January 17.*—MR ANDREW BIRNIE having granted a bond, blank in the creditor's name, to his good brother Short, the creditor's name being thereafter filled up, Mr Andrew Birnie suspended upon double-poining against him, and another creditor of Short's who had thereafter arrested.

THE LORDS preferred the person whose name was filled up ; in respect he had shown Mr Andrew the bond before the arrestment, and desired him to satisfy the same, though he had not made intimation by way of instrument. This decision seemeth to justice with that of the 11th November 1665, Telfer against Geddes, *infra* Sec. 2. *b. t.*

Dirleton, No 139. p. 57.

1676. *December 19.*GRANT *against* LORD BANFF.

No 3.

A bond granted for the price of land, blank in the creditor's name, out of the custody of the original creditor, was found effectual. The granter could not suspend payment on account of incumbrances not being purged.

GRANT having charged the Lord Banff for payment of a sum contained in his bond, he suspends, on this reason, that the bond was blank in the creditor's name, and was delivered by him to Lyon of Muresk, as a part of the price of the lands of Craigtoun, sold with absolute warrandice ; and there hath lately occurred a distress, and therefore the disposition of the land being the mutual cause, it is *causa data non secuta*. It was *answered, imo*, That the bond being granted blank, *ab initio*, the very granting of it in that way imports a passing from all objections, that it might pass to singular successors as currently as money, and therefore the Lords have refused compensation against blank bonds, upon the debt of him to whom they were first delivered.

THE LORDS found, that this bond, though it had been blank *ab initio*, could not have been stopped upon the warrandice of the disposition of the lands for which it was granted.

The suspender further *alleged*, and offered to prove, that this bond was blank *ab initio*, and delivered to Muresk, who was then at the horn ; and, therefore, he being the true creditor, the bond fell under his escheat, and the suspender hath right to the gift of his escheat. It was *answered*, That law and custom allows, that, after denunciation, a creditor may obtain payment of debts anterior to the rebellion, by assignation, precept, delegation, or otherwise, and Grant offers to prove that he was Muresk's creditor before the rebellion ; and, getting this blank bond, it was truly a delegation, and an innovation of the former obligation to Muresk, and more than if he had given an assignation to this creditor, who had thereupon discharged and gotten a new bond, which was lately found relevant, after much debate, in the case of Veitch against Pallat, *See COMPETITION* ; and, in this case, the debtor, by letters produced, declared that the bond should be as if any of Muresk's creditors had been filled up *ab initio*. It was