

tar's instance, before the filling up thereof.—THE LORDS, as to the first debate of retention and compensation, did find, that the Lord Banff had absolutely precluded himself by the missive letter, bearing a security to any third person whose name should be filled up, that he should be as fully his debtor as if he had given him bond for borrowed money *ab initio proprio nomine*; and so they did not give judgment upon the ground of law alledged in filling up of blank bonds, simply bearing borrowed money, albeit the true cause was the price of lands; but as to the second point, founded upon the donatar's interest, they did find, that the bond being blank when Murest was rebel, and delivered after gift and declarator raised, the same did belong to the donatar, or any having right from him; which may seem hard, if there was no special declarator, and the charger Grant of Rossolis was a true creditor prior to the rebellion, and that the subject for which the bond was given, being land and heritage, could never fall under escheat to the king, if there had been no disposition, and so by the sale thereof, for payment of lawful creditors who might have comprised these same lands, could never have been affected by the King's donatar as to the property, but as to the liferent only. It may also seem strange, that the *bona fide* accepting of bonds for payment, as the price of lands and heritage, should not be secured; which may hinder all commerce and bargains of lands, and force creditors to comprise, as not being *in tuto* to take assignations for the price, or bonds in their own name, from the buyers of the lands.

Gosford, MS. No 923.

1715. June 16.

LORD ALEXANDER HAY *against* MR JAMES INGLIS of St Leonards.

LORD ALEXANDER HAY pursues the said Mr James Inglis, brother to Mr Patrick Inglis, for 1100 merks, contained in a bond granted by Nairn of Saintford and Hay of Naughton, to the said Mr James, and assigned by him to a blank person: Which assignation being in the custody of the said Mr Patrick his brother, it was transferred by him to William Stuart, merchant in Edinburgh, before the act 1696, and by him to Lord Alexander; which sum, notwithstanding, was uplifted by Mr James the first cedent, whereby Lord Alexander *alleged* that the warrandice was incurred. And the question turning upon this, Whether the translation granted by Mr Patrick Inglis to William Stuart, did instruct that the assignation granted by Mr James (which is blank in the assignee's name,) did belong to Mr Patrick?

It was *alleged* for the defender, That it could not instruct the same, because, *1mo*, The assignation mentioned in the said translation bears to have been granted to Mr Patrick, *nominatim*; whereas the assignation produced is still blank in the assignee's name, and so cannot be the assignation mentioned in the translation. *2do*, The translation amounts to no more than Mr Patrick's own assertion, which is no legal proof.

No 3.

No 4.

A conveyance of a blank deed supported, on the presumption that the party in whose custody it was, had right to it.

No 4.

*Answered* for the purfuer, *imo*, Though the defender's affignation be blank, yet it is proper and customary in fuch cafes, for the granter of the tranflation to narrate the affignation as conceived in his own favours; and this does rather fupport the right, and fhews that Mr Patrick did claim the affignation as his own. And the reafon why he did not fill up his name in it, might have been to conceal it the better from his creditors. *2do*, Although the tranflation itfelf be not a fufficient proof, yet the tranflation, together with the having the affignation, does fully evince Mr Patrick's right to it, efpecially when there is no other perfon pretends right; for otherwife the tranfmiffion of the greateft part of blank writs might be called in queftion. And it is *jus tertii* (now that it hath paff through feveral hands) to the defender to controvert this, feeing he is denuded by the affignation, which is prefumed to have been delivered, being out of his cuftody.

THE LORDS repelled the defence, and decerned; to which their Lordfhips adhered, after two reclaiming bills.

Act. Binning.

Alt. Fleming.

Clerk, Gibson.

Bruce, No 100. p. 122.

1793. June 19.

ALEXANDER PAGAN and JAMES HUNTER *against* ALEXANDER WYLIE.

No 5.

When a bill already accepted and indorsed is fraudulently altered from a fmaller to a larger fum, in confequence of a blank being left in it, and is afterwards difcounted, all the perfons whofe names are upon it are liable for the full fum which the difcounter *bona fide* paid for it.

A HOLOGRAPH bill drawn by John March, after being accepted by James Hunter, and indorsed by Alexander Pagan, was put into the hands of the drawer, in order to raife money on it, who, there was reafon to believe, taking advantage of a blank in the body of the bill, fraudulently altered its amount from eight to eighty-four pounds Sterling, by adding the letter *y* to the end of the word *eight*, and the word *four* immediately after it.

The part thus added had rather a crowded appearance, and feemed to be written with different ink, but in the fame hand with the reft of the bill.

After this operation, March difcounted the bill for its full value with Alexander Wylie, agent at Dumfries for the Paisley Union Bank.

Before the bill became due March had fled the country.

Wylie having charged Hunter and Pagan for payment of the L. 84, they obtained a fufpenfion, and the Lord Ordinary afterwards reported the caufe, on informations.

The arguments of the bar were in a great meafure confined to the fpecial circumftances of the cafe. In particular, the charger endeavoured to eftablifh, that Hunter and Pagan had been in the praftice of intrufting March with bills, blank in the fum, leaving him to fill it up as occafion fhould require; and from that, and a variety of other fpecialties, he *contended*, that they were liable for the full fum for which he had *bona fide* difcounted it.