

No 47.

It was *objected* by the other creditors of James Drummond, That a bill not subscribed by the drawer, though accepted, could not be sustained as a ground of debt.

But as the creditor's name was inserted in the body of the bill in question, and thus there occurred all the essential requisites of a promissory note,

The Court repelled the objection.

Alt. Drummond. A.S. Dickson. Clerk, Menzies.
Stewart. Fol. Dic. v. 3. p. 76. Fac. Col. (Appendix.) No 7. p. 11.

1786. November 22.

ALEXANDER HARE *against* JEAN GEDDES, and Others.

No 48.
Found as
above.

In this case, being a comper of creditors, the objection was made to an accepted bill, That it was not subscribed by the drawer; which objection the Court considered to be obviated by the circumstance of the creditor's name being indorsed on the bill, over which stood receipts for partial payments. The name of the drawer was likewise inserted *in gremio* of the bill.

The Court therefore repelled the objection.

Alt. Honyman. Alt. Dalzell. Clerk, Home.
Stewart. Fol. Dic. v. 3. p. 76. Fac. Col. (Appendix.) No 8. p. 12.

See Fair *against* Cranston, *voce* BLANK WRIT.

See BLANK WRIT.

S E C T. VI.

Requisites of a Bill.

No 49.
A bill is in-
dorstable,
though not
bearing *To*
Order.

1726. January. Competition CHARLES CRICHTON with JAMES GIBSON.

It was disputed betwixt these parties, if a bill not bearing *to order*, was notwithstanding indorstable? And it was *pleaded* for the indorsee, There can be no more necessity to make a bill payable *to order*, than to make a bond payable to assignees; especially in this case, where the bill is betwixt two. In both cases, an effectual obligation is contracted of loan; they are both *nominā debitorum*, which are always assignable by our law. Perhaps there may be a difference, where a bill is taken payable to a third party: For there it may be argued, that the possessor of the bill is more properly a mandatary than creditor; and, therefore, if the drawer of the bill that remits the money, intends that his correspondent shall have the disposal of the bill, he adjects, *or order*: And it is thought by some foreign writers, that otherwise the correspondent cannot indorse the bill. This, it is believed, gave rise to the words, *or order*; which thereupon became common in all bills; but can never be necessary, where the procurer of the bill is the lender of the money, and the creditor himself.

It was *answered*, That when bills depart from the settled style and tenor, they have not the extraordinary privileges, which are given only to writs of a certain

form, by law and custom. It is not disputed, that the bill in question may be supported as a good ground of action, and be transmissible by assignation, having the common solemnities of law; but that it can pass by indorsement, which is an extraordinary privilege, will never be allowed. And this is the opinion of Marius and Scarlet, who maintain, in general, without any distinction, that no man can effectually indorse a bill, but what is made payable to himself and his order.

THE LORDS preferred the indorsee.

Fal. Dic. v. 1. p. 96. Rem. Dec. v. 1. No 78. p. 154.

1727. June 28.

GILBERT GRIERSON *against* EARL OF SUTHERLAND.

THE present Earl of Sutherland, when Lord Strathnaver, did, upon the 22d October 1702, draw a bill for the sum of 2400 merks Scots, payable to the Earl and Countess of Sutherland; and adds, 'This, with their receipt, shall oblige me to repay the like sum to you or your order.' This bill wants the address, but was notwithstanding accepted by David Sutherland of Kinnauld, and indorsed upon the back, by the Earl and Countess of Sutherland, to James More; who underneath acknowledges the receipt of the contents: Whereupon David Sutherland, the acceptor, retiring his bill, indorsed it again to Sir Robert Grierson; from whom it was derived to the present pursuer; who insisted in a process against this Earl of Sutherland, the drawer of the bill, upon his above-mentioned obligation.

It was first excepted against the bill, That it was addressed to no body; that the acceptor ought to be fully designed, to prevent uncertainty; that custom has established this, which is the mother of bills; and, therefore, without it, the bill is not complete, and cannot be the subject of an action or diligence.

Answered for Mr Grierson: Albeit the bill was not directed to David Sutherland, this was supplied by the acceptance; and seeing *constat de persona*, the objection was of no moment; no law having established this as a necessary solemnity of a bill; it is sufficient that there is an acceptor, to make it complete; and Mr Forbes, in his treatise on bills, § 6. says, 'That a bill, though not addressed to the acceptor, may be accepted by him;' which he supports by the opinion of *Marius*, a noted author on the subject of bills: It is believed not to be a case only in imagination, that a bill may be directed to one, and another step in and accept it; which acceptance would be good to bind him, and give him action for repayment. But whatever is in that, the direction is no more than an ascertaining of the person, to whom the bill is to be presented for acceptance; and when that direction is wanting, and an acceptor appears, it must be presumed, that the direction was given by the drawer to the possessor; and intimation to the person who accepts; which is sufficient to constitute the contract; so that an action may be founded upon it.

THE LORDS repelled this exception.

No 49.

No 50.

A bill accepted, without being addressed to any person, sustained.

An obligation to repay, engrossed in a bill, found indorsable.