

No 22. that death-bed is only competent, when the immediate heir is leased; for his consent has this effect, whether he or any subsequent heir suffer by the death-bed, in respect, *1mo*, That thereby all suspicion of fraud or imposition is taken away; and, *2do*, That the consent is *fictione brevis manus*, of the same import, as if the dying person had disposed to the heir, and the heir in *liege poustie* had conveyed to the stranger, which would exclude all possibility of challenge, at the instance of the remoter heir.

'THE LORDS found the action of death-bed competent to Mr Arbuthnot, though a remoter heir, notwithstanding that the nearest heir was the substitute.' (Referred to *voce* DEATH-BED.)

Fol. Dic. v. 1. p. 104. Rem. Dec. v. 1. No 33. p. 65.

1730. Jan. 8. EXECUTORS of Mr ROBERT WALKINGSHAW *against* CAMPBELL.

No 23.
A bill drawn payable 'to the bearer,' was considered to be null as a blank writ.

JOHN CAMPBELL of Mamore drew a bill upon Ronald Campbell, writer to the signet, payable *to the bearer*, which was accepted.

The holder of the bill was Captain Patrick Ronalds, whose creditors, the Executors of Walkingshaw, arrested the sum in the hands of the acceptor. In a furthcoming, it was *objected*, That the document was null upon the act 1696, relative to blank writs.

After a variety of procedure, the Court pronounced this interlocutor: 'Having considered the petition with answers, with the memorial, together with the act of Parliament anent blank bonds and writs, Find the bill in question not obligatory.'

A second petition is introduced in this manner: 'This question has depended before your Lordships since 1725. It has received six different interlocutors; and, by no less than four of these interlocutors, the bill was found good; by two of which, in presence, the defence on the act of Parliament was repelled.' This second petition was refused without answers.—The memorial alluded to in the interlocutor was written by Lord Kames. It was *argued*, That bills may be considered as blank writs in two different shapes; *1st*, When the name of the drawer is blank; and *2dly*, When there are both a drawer and acceptor subscribing, but the creditor's name to whom payable is blank. The first only, it was contended, was under the eye of the legislature in the act 1696. The main design of the statute was to obviate a fraud, at that time much in use, committed by people *labentes* or *lapsi bonis*, of taking blank obligations from their debtors, which they had the opportunity of conveying privately away, in defraud of their lawful creditors. This object of the act corresponded ill with the nature of bills of exchange, the purpose of which is, that they shall pass freely from hand to hand like bags of money. It must have been this consideration which occasioned the exception of blank indorsations contained in the act: And the intention of the act is as much accomplished as it can be with regard to bills, by rendering them null, if

blank in the drawer's name. For this indeed there was reason. It became an additional check against Forgery; and, without the subscription of a drawer, the contract supposed in a bill is imperfect, and the possessor is deprived of his recourse,

As to bills subscribed both by drawer and acceptor, but blank in the name of the creditor, there can be no reason for comprehending these more than blank indorsements under the act. Both are in precisely the same situation; and, in the spirit of the act, a bill blank in the creditor's name, ought to be exempted as well as one blank in the indorsement. The law is correctory, and ought rather to be restricted than extended in interpretation. It is besides worthy of notice, that a bill 'payable to the bearer,' is in fact not truly a *blank* writ in any respect. The drawer is in fact the creditor. The *bearer* is 'his order.'

All this argument was disregarded.

Fol. Dic. v. 1. p. 104. Session Papers in Advocates' Library.

1734. February 14. NEILSON against RUSSEL.

LUDOVICK GORDON, merchant in Inverness, drew a bill on Sir Robert Gordon, for L. 237 : 13 : 7, which was accepted.

The drawer's name was in the body of the bill; but his subscription had not been exhibited, when William Neilson used an arrestment in Sir Robert's hands.

Ludovick Gordon, after this, subscribed as drawer, and indorsed the bill to Francis Ruffel.

Sir Robert raised a multiplepinding; and the cause having been reported, THE LORDS found it relevant to prefer the arrester, that the bill was not subscribed by the drawer at the time it was accepted by Sir Robert Gordon, nor before his arrestment; and sustained the same probable by William Neilson, *pro ut de jure*; and *separatim* found, that the indorsement being made in prejudice of William Neilson's prior diligence, was reducible, at his instance, upon the acts 1621 and 1696, in so far as the indorsement was granted in satisfaction of anterior debts; but sustained the indorsement *pro reliquo*.

In a petition, an attempt was made to make out, *imo*, That the bill was not blank in the creditor's name, at the date of the acceptance; and therefore did not fall under the act 1696 against blank writs. *2do*, That supposing the deed to have been incomplete at the date of the delivery to the indorsee or his agent, it was put in their power to complete it before it was indorsed, which they actually did, and that before it appeared in judgment; therefore it must be considered as complete from its date. *3tio*, That the objection was probable only *scripto vel juramento* of an onerous indorsee. *4to*, That the indorsement did not fall under the statutes 1621 or 1696, relative to bankruptcy, as there was instant value given.

No 23.

No 24.

An arrestment of the sum in a bill used before the drawer's subscription was exhibited, was preferred to a subsequent onerous indorsement.