

No 36.

The subscription of the drawer, held to be an essential requisite.

1738. December 5.

A. against B.

UPON the verbal report of the Lord Elchies, How far a bill thus conceived was valid? 'Pay to me, John Bell, L. 50 Sterling, value received,' addressed to and accepted by James Hall; but neither signed by John Bell, nor of his hand-writing:—It was found, 'That the bill being neither signed by the drawer, nor of his hand-writing, was null.'

This was not upon the act 1696, concerning blank writs; for the alleged drawer's name being in the body of the bill, obviated that objection; but, on this ground, that a bill is a mutual contract between drawer and acceptor; and in all mutual contracts, both parties must be bound; and therefore it is a null contract, unless the consent of the drawer be interposed, as well as of the acceptor. And this being the ground on which the decision proceeded, it was, in the reasoning, agreed, That, as the creditor's name was in the bill, had it either been of his hand-writing, or, if the drawer's name had been adjected, before it had been produced in judgment, it would have been good: In like manner, as a bond duly signed before witnesses, but not subscribed by the witnesses before delivery, may, thereafter, be subscribed by them, at any time before production in judgment. Whereas, where the objection lies to a bill, upon the act 1696, the defect cannot be supplied after delivery. [This seems to be the same case with No 37.]

Kilkerran, (BILL OF EXCHANGE.) No 3. p. 70.

No 37.

The subscription of the drawer, an essential requisite.

1738. December 6.

M'RAITH against MURDOCH.

A BILL was found null, being neither signed by the alleged drawer, nor of his hand-writing; which was not upon the act of Parliament regarding blank writs; because the alleged drawer's name was on the body of the bill; but, upon this footing, that a bill is a mutual contract; an order, or mandate, by the one party, and an acceptance of the order, or mandate, by the other, which binds the parties mutually, according to the nature of the mandate: And, upon the common principle of contracts, both parties must be bound, or neither; and so there can be no obligation, unless the consent of the drawer be interposed, as well as of the acceptor. See This case, *voce* MUTUAL CONTRACT.

Fol. Dic. v. 1. p. 96.

No 38.

A bill not signed by the drawer till after the acceptor had become bankrupt, sustained.

1742. November 12.

SANDILANDS against DICKSON.

BILLS not signed by the drawer are incomplete deeds, as all other contracts intended to be mutual are, while only subscribed by one of the parties. But as other mutual contracts subscribed by the one become complete, as soon as the other party subscribes; so the bill-contract, subscribed by the acceptor, becomes complete as soon as the drawer adhibits his subscription.

And in general none doubted; but that the drawer might lawfully exhibit his subscription at any time before the bill was produced in the judgment. But the question here was, Whether the drawer could effectually exhibit his subscription after the acceptor was become bankrupt, so as thereupon to compete with prior creditors.

David Dickson, the defender, and conjunct acceptor of the bill pursued for, with James Home now bankrupt, and from whom he had a bond of relief, objected, that the drawer had not exhibited his subscription till after the bankruptcy of Home; at which time the drawer could not, by his act, rear up a debt against Home, to compete with his prior creditors, which, before the bankruptcy, was void; and if, through the fault of the drawer, he, Dickson, had thus lost his relief, he could not be liable to the drawer in the debt; which the LORDS 'repelled.'

For as the bill stood upon the act of Home, prior to his bankruptcy, and required a new consent of his to make it effectual, there was nothing in the circumstance of Home's bankruptcy from which Dickson's relief should be lost.

Fol. Dic. v. 3. p. 76. Kalkerran, (BILL OF EXCHANGE.) No 6. p. 71.

1748. June 18.

TURNBULL against TUDHOPE.

THOMAS TURNBULL, merchant in Hawick, obtained a bill indorsed to him for value by Robert Taylor, tobacconist there; drawn by Taylor upon Robert Tudhope, flesher there, for L. 20 Sterling, payable twelve months after date.

Tudhope suspended, for that Taylor wanting such a sum, prevailed on him to borrow it from his aunt Jean Taylor, not inclining to let her be acquainted with his straits; that the bill was accepted blank, in the drawer's name, and the money given to Taylor, on his bill to the suspender of the same date; but Jean Taylor having left her bill in her nephew's hands, he had filled up his own name as drawer, and indorsed it for no value truly received: The charger therefore had no title to the security, which really belonged to Jean Taylor; or, if it was carried by the filling-up and indorsation, compensation upon Taylor's bill was a competent defence; both on account of the gratuitousness of the indorsation, and that the term of payment being a year after the date, the bill was not entitled to any privileges.

Turnbull condescended, that the cause of the indorsation was for L. 17 Sterling, which Taylor owed him, he being to account for the remainder; and the LORD ORDINARY, 17th January 1747, 'repelled the reasons of suspension, and found 'the oath of the indorser could not be received against the charger, an onerous indorsee, so far as concerned the L. 17 Sterling.'

Pleaded, in a reclaiming bill, That the privileges of onerous indorsations were only competent upon bills of exchange, where one drew payable to another in the way of trade; not when a security for money was taken in this shape betwixt

No 38.

No 39.

A bill was accepted blank in the drawer's name; and a person, who had no title to it, filled up his own name. The indorser's oath found not competent against the onerous indorsee.