ed the objection; but afterwards, on the charger's allegation, James Campbell having been obliged to depone, and having acknowledged that the bill was all written by him, and that he agreed to become cautioner, and accordingly wrote the bill in that form,—that the charger objected to the word "cautioner," and that the suspender answered that he would be bound in no other way,—Kilkerran altered his interlocutor and sustained the bill; and on a reclaiming bill and answers we adhered; for we thought he was bound first by his agreeing to become cautioner; 2dly, we thought it a fraud to induce the charger to accept of a null bill. But Drummore (in the Chair) doubted if that was a nullity.

No. 55. 1754, Feb. 20. LOOKUP *against* CREDITORS of CROMBIE.

I OMITTED to mark, 20th February, the case betwixt Andrew Lookup and Creditors of Crombie, touching two bills in 1722 for L.6 sterling, and another in 1724 for about three guineas, for which Lookup competed in 1752 or 1753; and Lord Strichen found them presumed paid; and on a reclaiming bill without answers, we altered a little the words of the interlocutor, and found that no action lies on these bills, and therefore adhered to the Ordinary's interlocutor, agreeably to our decisions in 1746, betwixt Moncrieff of Tippermalloch and Sir Thomas Moncrieff.—26th February.

BLANK WRIT.

No. 1. 1742, Dec. 21. CAIRNS *against* CAIRNS.

THE Lords found that a bond secluding executors with a substitution, that appeared originally blank, and afterwards filled up with a different hand, must be held as still blank as to the substitution, though the deed was before 1696, because it never was the custom to have substitutions blank where the creditor or disponee is filled up.

No. 2. 1749, Feb. 10. DONALDSON *against* DONALDSON.

A DISPOSITION by the pursuer's father to the deceased James Donaldson, his second son, of the lands of Barrachrae, redeemable for L.4, reserving his liferent and power to burden; upon it James, then in Maryland, was infeft in December 1721, and 10th January 1722, Mr William, the father, executed a deed reciting the disposition, and in certain events burdening the lands with 12,000 merks, and died in 1723, and James possessed till his death in 1738; and in 1739, Mr William, the eldest son, pursued reduction of the disposition 1716, as being blank in the defender's name, and filled up with a different hand, and the filler up not designed, and it appeared *ex facie* to have been written blank, and filled up. As far as I could judge by the hand-writing, it was filled up by the granter, and two of the blanks still remained unfilled up to this day. The pursuer insisted on both the act 1681 and 1696. Answered, That it could be no nullity upon the act 1681, because blank writs remained valid deeds after that act, by which no more was intended but the writer of the body of the deed, but neither the

filler up of the witnesses' names and designation, as has been often found, nor of the creditors or disponees names; and as to the act 1696, that it did not appear that it was blank at subscribing; 2*do*, that it must have been filled up at taking the sasine in 1621 before delivery; 3*tio*, homologated by the deed in 1722. Replied, The creditor or disponee's name is now an essential part of the deed; 2*do*, its being filled up by a different hand than the writer of the rest of the deed, must throw the *onus probandi* on the receiver; 3*tio*, not sufficient that it was filled up before delivery, unless done before the same witnesses; 4*to*, homologation cannot make that a valid deed, and therefore is no defence, unless it were of itself sufficient to convey the lands. I thought, and most of the Lords seemed to think, the answer to the act 1681 good; but the President thought, that since the act 1696 made the disponee's name an essential part of the deed, that the writer or the inserter of it became necessary by the act 1681. But by the same argument, so would the filler up of the witnesses' names and designations, which are made essential by that same act 1681. We found that the *onus probandi* lies on the defender, that the blanks were filled up before subscribing, or before the same witnesses, and in that we were unanimous; and the blank that remained in the very last lines immediately before the subscriptions had great weight with some, particularly Drummore; and we repelled the homologation; in which indeed I differed, for we have often sustained homologations of deeds labouring under statutory nullities, as the want of the writer's name and designation, or that of the witnesses; and I was not quite satisfied with the destination, that these concerned the deeds being probative, which therefore might be supplied by the granter's acknowledging it in an after solemn deed; whereas the acknowledging his having granted this deed blank which he afterwards filled up, would not make it a valid deed against the act of Parliament; but was not this destination in effect a ratification of the former? 12th July Adhered.

BONA ET MALA FIDES—BONA FIDE PAYMENT.

No. 2. 1736, Feb. 17. YORK-BUILDINGS COMPANY *against* GARDEN.

THE Lords sustained the defence of *bona fide* payment, in respect the payment was made without collusion after the legal term, though before the conventional term.—N. B. The Lords in the interlocutor avoided using the words "legal term," and used the words "the term of Martinmas."

No. 3. 1736, Jan. 13. July 1. 25. DALRYMPLE *against* DALRYMPLE.

THE Lords adhered to the Ordinary's interlocutor.

No. 4. 1738, Jan. 26. CORSAN and RAE *against* MAXWELL.

See Note of No. 16, *voce* ADJUDICATION.