

No 18.

Action found to be incompetent, on a bill found in the repositories of a defunct, blank in the drawer's name.

1777. July 25.

ROBERTSON and ROSS *against* BISSETS.

MR THOMAS BISSET of Glenalbert accepted a bill for 15l. 5s. Sterling to Mr Charles Robertson of Balnaguard, as the value of a parcel of sheep, and a small quantity of indigo; but the acceptor died without paying the bill, and after he had disposed his estate to his eldest son. The person to whom the bill was originally granted, died likewise; and his son succeeded to him, under a general disposition to all his effects, being also nominated executor and universal legatee. He indorsed the bill to Mr James Ross, in part payment of an account which he owed him; and, as he found his father had neglected to adhibit his name to the bill, he substituted his own as drawer and indorser. Mr Ross thereupon brought an action against the representative of the acceptor; and Mr Robertson having, in the mean time, paid the account for which the bill was indorsed to Mr Ross, the action proceeded at the joint instance of both. Lord Elliock, Ordinary, upon the 22d January 1777, pronounced this interlocutor: 'In respect that it is acknowledged by the pursuer, that the subscription to the indorsation in his favour, is not the subscription of the drawer of the bill; finds, that no action lies at his instance for payment of the contents of said bill; affoizies the defender, and decerns.' In a reclaiming petition for the pursuers, it was stated, in order to obviate any objection which might arise from the circumstance of the action having been brought by Ross the indorsee, that James Ross was only a name; the real pursuer being now Charles Robertson, son and heir to the person in whose favour the bill was granted. The merits of the cause were argued at great length in this petition. It was said, That, all over Scotland, the lesser proprietors of land, the farmers, the lower manufacturers, and country people, look upon themselves as perfectly secure, if they have their debtor's acceptance to a bill, or writing resembling one, in which the sum of the debt is particularly specified: That this belief was even founded upon the acknowledged principles of law, and the decisions of the Court; which, from the judgment of the House of Lords, *anno* 1747, (*see* p. 1630.) in the case of Rigg of Morton, down to the date of the statute 12th Geo. III., had sustained bills as permanent securities for money, and allowed interest upon them as such: That there were, therefore, two different species of bills known in our law; the one, a bill of exchange, used among merchants, and regulated by the law of merchants; the other, an inland bill, a form of security used amongst people not versant in trade, intended as a document of debt, subsisting for a period incompatible with the nature of a bill of exchange, and bearing interest from the operation of the law, which no bill of exchange does till dishonoured: That, as law allowed the drawer to sign at any time he thought fit, his signature could not be reckoned essential to the completion of the bill; the acceptor remained bound, in the mean time, by his own signature, and could not be liberated by the accidental circumstance of the drawer's death: That the father, the original drawer, could have signed the bill *quandocunque*; and the son having succeeded to it as it stood when the father died, he must be

entitled equally as the father, to complete the writing by his subscription : And that our lawyers had laid down erroneous opinions upon this point, from not attending to the above distinction between inland and foreign bills ; but no opinion, however respectable in other matters, will ever induce mankind to subscribe to a doctrine, which seems to revolt from every idea of justice ; and which involves in consequences, that may prove fatal to the fortunes of even the most opulent. The petitioners put a great variety of cases to illustrate and support their argument. They figured a merchant, a dealer in bills of exchange, sending his clerk with money to a neighbouring merchant, to purchase bills to be transmitted abroad : They figured the clerk paying the money, getting the acceptances blank in the drawer's name, to be filled up at the time of the remittance, but, on return to his master, finding he had died suddenly. They figured a bill drawn in favour of a third party, upon one who, on a demand made, refused to accept ; and as a bill, in such circumstances, though unsigned by the acceptor, was still effectual against the drawer for recourse, and also against the acceptor, to the effect of carrying any funds of the drawer in his hands, they argued in favour of a bill incomplete in another way, viz. by wanting the drawer's signature, being a good ground of action against the acceptor. The case of one Cameron, (not reported,) was referred to, where, in 1775, it was said, the Court had sustained action on a bill blank in the drawer's name.—The COURT, on advising this petition, with an answer, adhered to the interlocutor of the Lord Ordinary.

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*** The particulars of this case are stated in the Session Papers of the case which follows.*

1801. July 11.

FAIR *against* CRANSTON.

THERE was found in the repositories of James Fair, agent for the British Linen Company at Jedburgh, deceased, a bill at three days date, for L. 40, blank in the drawer's name, subscribed by three acceptors, of whom Robert Cranston was one. On the back was marked a receipt for L. 15.

William Fair having been confirmed executor to the deceased James Fair his father, inserted his own name as drawer, and brought an action against Cranston, in which he obtained decree in absence. Cranston having attempted a suspension, Lord Cullen found the letters orderly proceeded. On advising a representation, with answers, his Lordship pronounced this interlocutor : ' In respect it is clearly proved, by the excerpts from the books of the late Mr James Fair, that the bill in question, dated the 11th day of June 1793, payable three days after date, was granted for the sum of L. 40 Sterling, then advanced by him to the suspender, and the other acceptors of that bill, and that a partial payment of L. 15 Sterling was made upon the 17th of September thereafter, and which partial payment is marked on the back of said bill ; and further, although the said James Fair omitted to subscribed his name as drawer, and that it remain-

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The representative of a person, in whose repositories was found a bill blank in the drawer's name, was found entitled to insert his own name as drawer.