

No 4.

Answered for the purfuer, *imo*, Though the defender's affignation be blank, yet it is proper and customary in fuch cafes, for the granter of the tranflation to narrate the affignation as conceived in his own favours; and this does rather fupport the right, and fhews that Mr Patrick did claim the affignation as his own. And the reafon why he did not fill up his name in it, might have been to conceal it the better from his creditors. *2do*, Although the tranflation itfelf be not a fufficient proof, yet the tranflation, together with the having the affignation, does fully evince Mr Patrick's right to it, efpecially when there is no other perfon pretends right; for otherwife the tranfmiffion of the greateft part of blank writs might be called in queftion. And it is *jus tertii* (now that it hath paff through feveral hands) to the defender to controvert this, feeing he is denuded by the affignation, which is prefumed to have been delivered, being out of his cuftody.

THE LORDS repelled the defence, and decerned; to which their Lordfhips adhered, after two reclaiming bills.

Act. Binning.

Alt. Fleming.

Clerk, Gibson.

Bruce, No 100. p. 122.

1793. June 19.

ALEXANDER PAGAN and JAMES HUNTER *against* ALEXANDER WYLIE.

No 5.

When a bill already accepted and indorsed is fraudulently altered from a fmaller to a larger fum, in consequence of a blank being left in it, and is afterwards difcounted, all the perfons whose names are upon it are liable for the full fum which the difcounter *bona fide* paid for it.

A HOLOGRAPH bill drawn by John March, after being accepted by James Hunter, and indorsed by Alexander Pagan, was put into the hands of the drawer, in order to raife money on it, who, there was reafon to believe, taking advantage of a blank in the body of the bill, fraudulently altered its amount from eight to eighty-four pounds Sterling, by adding the letter *y* to the end of the word *eight*, and the word *four* immediately after it.

The part thus added had rather a crowded appearance, and feemed to be written with different ink, but in the fame hand with the reft of the bill.

After this operation, March difcounted the bill for its full value with Alexander Wylie, agent at Dumfries for the Paisley Union Bank.

Before the bill became due March had fled the country.

Wylie having charged Hunter and Pagan for payment of the L. 84, they obtained a fufpenfion, and the Lord Ordinary afterwards reported the caufe, on informations.

The arguments of the bar were in a great meafure confined to the fpecial circumftances of the cafe. In particular, the charger endeavoured to eftablifh, that Hunter and Pagan had been in the praftice of intrufting March with bills, blank in the fum, leaving him to fill it up as occafion fhould require; and from that, and a variety of other fpecialties, he *contended*, that they were liable for the full fum for which he had *bona fide* difcounted it.

The suspenders endeavoured to obviate the conclusions drawn from these facts, and at the same time to assimilate the fraudulent interpolation to the case of forgery or vitiation; and thence they argued: *1st*, That the alteration being a *viti-um reale*, the bill could not be sustained as a document of debt: *2dly*, That as the alteration was visible, Wylie was equally negligent in not discovering it, as they were in putting their names to a bill with a blank *in gremio*; and that therefore both parties being *in pari casu*, where the loss had fallen, there it must remain.

No 5.

The Court, waving the specialties which occurred in the cause, went upon the following grounds. Where a blank is left in a bill, sufficient to admit the insertion of part of one word, and the whole of another, as in the present case, any person who puts his name upon it, whether as drawer, acceptor, or indorser, and trusts it in the hands of another, and particularly of the person by whom it was written, in order to its being passed by him into the circle, must be liable for the consequences, in the same manner as if it had been left blank in the sum altogether, it being nearly the same thing, whether the blank be total or partial. And although, upon a narrow inspection, a small crowding of the letters, and some little difference in the colour of the ink, might have been perceived, both were too trifling to put the discounter on his guard; even if he had hesitated, and made enquiry into these circumstances, he might have been told, without putting him *in mala fide*. that there had been originally a blank left, in order to be filled up with the sum which might be wanted. The circumstance of leaving a blank must be held as a tacit mandate from the parties whose names were upon the bill, intrusting the holder with the power of filling it up; and therefore the present case differs widely from a forgery or vitiation, for there one writing is converted into another, without the consent of the parties, either express or implied.

THE LORDS unanimously 'repelled the reasons of suspension.'

Lord Ordinary, *Dregborn.*

For the Chargers, *D. Catcart.*

R. Davidson.

For the Suspenders, *R. Hamilton.*

Clerk, *Menzies.*

Fac. Col. No 62. p. 136.

SECT. II.

Effect of intimation of Blank Writs.

1627. February 9. CRAUFURD *against* CRAUFURD and KNIBLO.

IN an action of double poinding, at the instance of Malcolm Craufurd, who was addebted to another Craufurd the sum of 260 merks, and this Craufurd

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No 6.

Found, that
after arrest-
ment, the ar-