

No 6.
 refter could
 not be pre-
 judiced
 by the in-
 ferting a per-
 fon's name in
 a blank obli-
 gation; but
 that the *fact*
 and the *time*
 could be af-
 certained on-
 ly by the oath
 of the person
 whofe name
 was inferted.

being addebted to James Kniblo, burgefs of Edinburgh, in a debt; for payment of this debt Kniblo arrefts the forefaid fum in Malcolm Craufurd's hands, and Malcolm having confeft that he was owing that fum to Craufurd this creditor, but that he had given his obligation to his faid creditor thereupon, blank in the name, to be filled up with any perfon's name whom his creditor pleased to infert; and that he had underftood, fince that time, that there was infert therein the name of Andrew Craufurd of Baidland, who being called to this double pointing, the fufpender is content to pay to any of the parties, who fhall be found to have right; and Baidland compearing, and *alleging* that the fum fhould be found to pertain to him, becaufe his name was infert in the bond; for albeit he had neither borrowing nor lending with this fufpender, yet feeing his name was in the obligation, and that nothing intervened which could prohibit Craufurd, to whom the fum was owing, truly to fill in his name, nor to have given the fum to him, albeit it had been filled up with the creditor's proper name; therefore he ought to be preferred: Kniblo, on the other part, *contended*, that the fufpender confeffing that the fum was due and proper to his debtor, albeit the bond was blank, and that he had arrefted the fame as his debtor's money, in the fufpender's hands, at which time of the arreftment the blank was yet unfilled up, that then it was his debtor's money ftill; thereafter the filling up of another perfon's name in the blank by his debtor, after the arreftment which affected it to him, cannot prejudice him; which filling up, fince the arreftment, he offered to prove by the witneffes infert in the bond. THE LORDS found, that, after the arreftment, nothing could be done to the prejudice of the creditor arrefter, by filling up thereafter of a perfon in the blank, by him who was the arrefter's debtor; and fo the Lords found the arrefter's allegiance relevant, that, fince the arreftment, Baidland's name was infert therein, but found that the fame was only relevant to be proven by Baidland's oath, and not by the witneffes infert therein; for they could not take away the obligation from Baidland by witneffes, but by his own oath; and this being fo proven, the LORDS found, that Kniblo fhould be preferred; but if it had been alleged that the bond, albeit blank, had been really delivered to Baidland before the arreftment to his own ufe, that would have been found relevant againft the arrefter, and the inferting of his name therein fince the arreftment would not have been enough to prejudice him thereof.

A&. *Belches.*

Alt. *Mowat.*

Clerk, *Gibson.*

Fol. Dic. v. 1. p. 103. Durie, p. 270.

1665. *November 1.*

Telfer against GEDDES.

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 An arrefter
 was preferred
 to a party

MARJORY SANDILANDS having granted to Samuel Veitch a blank bond of 2000 merks, Telfer, being creditor to Samuel Veitch, arrefts all fums in her hand

owing to Samuel : She depones, That she was no ways debtor to Samuel but by a bond given blank in the creditor's name, and that she knew not whose name is filled up therein ; compearance is made for Marion Geddes, whose name is filled up in the bond ; and she *alleges*, she ought to be preferred to the arrester, because she offers to prove her name was filled up in the bond, and that, before the arrestment, the bond was regiftrate in her name ; and that, before the said Marjory deponed, she had used inhibition thereupon, which she could not but have known. It was *answered* for the arrester, That he ought to be preferred, because albeit the bond was blank *ab initio*, yet, in *rei veritate*, Samuel Veitch was creditor, and so he behoved to be legally denuded, which could not be done by filling up any other person's name, without intimation thereof made to the debtor ; for seeing a direct assignation was not valid without an intimation, much less should this indirect way, by the creditor's filling up another name than his own in the blank ; which is in effect an assignation : And seeing the Lords have already found, that the debtor acknowledging that he gave a blank bond to any person, and knowing not whose name is filled up in it, is liable to any arrester, albeit he be under hazard to pay again to that person who has his bond ; in justice it followeth, that such bonds must be intimated, otherways it will unavoidably infer double payment. It was *answered*, That the law requires intimation to an assignation as a necessary solemnity, but has not required the same to the filling up of a blank bond, the case whereof is not alike with an assignation, because, where the bond is blank, the debtor cannot pay any thing *bona fide* safely till he see the bond filled up ; but where he sees the name filled up, he may pay *bona fide* to the cedent, not knowing of the assignation. It was *answered*, That the law did require to all assignations intimation, but the case of blank bonds was but a late invention, to defraud creditors, that it might not be known who was creditor : but seeing it is truly an assignation, it deserves no favour more than a direct assignation ; and so should have as much solemnity.

THE LORDS preferred the arrester ; but because the case was a leading case, and new, after a second interlocutor adhering, they allowed the advocates to offer, by bill, any new reasons ; and, particularly, if it could be alleged, that the debtor, granter of the blank bond, had, before the arrestment, seen the blank bond filled up, and so had deponed, or could depone, that the time of the arrestment the debtor saw himself to be debtor to another person, filled up in the blank, than he for whose debt it was arrested ; for, in that case, as the first creditor that got the blank bond might have caused his debtor retire that bond, and give a new one, before any arrestment, so the showing of the filling up of the blank was equivalent, especially if the debt could be proven no otherways but by the debtor's oath.

This case was not debated, nor was the hazard considered, that the debtor's oath might prefer one party to another ; nor was the case alike to a renewed

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whose name
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in a blank
bond, as the
filling up was
not intimated
to the debtor
before the ar-
restment.

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bond ; because a renewed bond would bear a new date, and different witnesses, that saw the new creditor's name filled up, and would not depend upon the single testimony of the debtor.

December 1. 1665.—THE competition between Telfer and Geddes, mentioned the 11th of November last, being this day again called, debated and reconsidered by the Lords at length : The question being, that Marjory Sandilands having granted a bond to Samuel Veitch, blank in the creditor's name, Samuel filled up Marion Geddes' name therein, whereupon she registered the bond, and charged him ; in the mean time, Telfer, as Veitch's creditor, having arrested all sums in Marjory Sandilands' hands, addebted by her to Samuel Veitch, and pursuing to make the same furthcoming, she depones, that the time of the arrestment she was no ways debtor to Veitch, but by a bond, blank in the creditor's name, and that she did not know whose name was filled up in it : But now Telfer the arrester compearing, craves to be preferred, because he had arrested the sum, as belonging to Samuel Veitch his debtor, before Samuel Veitch was denuded, by filling up Marion Geddes's name, and intimating, or showing the same to Sandilands the debtor ; and that the filling up of Geddes's name, being but an assignation, did necessarily require to accomplish it, to denude the cedent, an intimation ; for seeing express assignations do necessarily require intimation, to prefer them to arrestments ; much more ought indirect assignations, which are suspect of fraud, and by which a debtor may keep all his estate in a cloud, that none of the creditors can reach the same, by arrestment or otherwise. And it being *answered*, That the bond being delivered blank, there was no present creditor, but a power granted to the receiver of the bond to make creditor whom he pleased ; at least there was no certain creditor, so that Samuel Veitch was never creditor, but had only the power to make the creditor, and so needed not to be denuded, nor was there any law or custom requiring intimation of the names filled up in blank bonds, and if any such thing were done, upon the account of expediency, it ought only to be in time coming :

THE LORDS adhered to their former interlocutor, and found Veitch to have been the true creditor, and the filling up of the other name, to be a transmissiion equivalent to an assignation, and required intimation, as well for cases past as to come ; for they thought that if Veitch, before the filling of the bond, had been rebel, it would have fallen within his escheat.

Fol. Dic. v. 1. p. 103. Stair, v. 1. p. 306. 318.

. * * * Gilmour reports the same case :

THE relict of Mr John Alexander, advocate, being debtor by bond to Samuel Veitch in a sum of money ; it is arrested by Patrick Telfer, and thereupon a

summons raised for making furthcoming, and at compearance the debt is referred to her oath, who depones and confesses the debt, but that she gave the bond blank in the creditor's name, and that she knew none other to have right thereto but the said Samuel Veitch. Compears Marion Geddes, and produces the bond registrated, and her own name insert therein, before the arrestment, and thereupon an inhibition served against the deponer before her deposition and oath. It was *alleged* for the arrester, That he ought to be preferred, because the bond being *ab initio* the evident and debt of the said Samuel Veitch, and being affected with the arrestment, before any intimation made to the debtor of inserting Marion's name (though Geddes's name had been inserted, and that the bond had been delivered to her before the arrestment), yet it was of no greater force than if the bond had been filled up in the said Samuel Veitch's name, and had been assigned by him to the said Geddes; which assignation could not have preferred her to the arrester, unless it had been intimated before the arrestment. It was *answered*, That the debtor having delivered the bond blank, no certain creditor was condescended upon; and therefore, till it was filled up, payment could not have been made in whole or in part to any body, but such as should be inserted; and Geddes's name being inserted, and the bond delivered to her, and registrated before the arrestment, there being no law obliging her to make a formal intimation now, while the money is still resting, she ought to be preferred to the arrester, the debtor not being debtor to the arrester's debtor the time of the arrestment.

THE LORDS preferred the arrester.

Gilmour, No 164. p. 115.

* * * See The same case by Lord Newbyth, titled Telfer against Jamieson,
voce COMPETITION.

1668. January 18.

MR ANDREW BROWN *against* DAVID HENDERSON and THOMAS GEORGE.

MR ANDREW BROWN granted a bond of 700 merks, blank in the creditor's name, to George Short, wherein the name of David Henderson is now filled up. Thereon Alexander having arrested all sums due to George Short in the hands of Mr Andrew Brown, he raises a double poinding; wherein the competition arises betwixt the arrester, and the person whose name is filled up in the blank bond. It was *alleged* for the arrester, That he ought to be preferred, because he arrested Short's money; and, at the time of the arrestment, this bond having been delivered to Short blank in the creditor's name, Short was creditor ay and while not only another name were filled up, but also an instrument of intimation were taken thereupon; for Short's filling up of the name of Henderson is no more than an assignation, which requires intimation, and is excluded by an arrestment before

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Where the blank in a deed was filled up, and intimated to the debtor before arrestment, the arrestment ineffectual.