

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.