

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.

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ed in that situation till his death, in the year 1796; yet, as the present charger, his son, has expedie a confirmation as executor to him, and has thereby vested in himself a right to the said bill, and adhibited his name as drawer, before producing the same in judgment: Therefore, adheres to the interlocutor complained of, and refuses the desire of the representation; but superfedes extract till the third federunt day in May next.'

The cause was brought before the Court by petition; in which it was *pleaded*, That the bill must be considered as blank in the creditor's name, and therefore void and null; Erskine, b. 3. tit. 2. § 28.; Macraith against Murdoch, No 37. p. 1436.; Walkingham against Campbell, No 23. p. 1684.; Douglas and Wood against Logan, No 41. p. 1438.; Cathcart against Representatives of Dick, No 42. p. 1439.; Robertson and Ross against Bisset, No 18. p. 1677.; act 1696, cap. 25.

It was further *pleaded*, That the writing founded on being defective as a bill, could not be sustained on any other footing; as a voucher of debt, It was not a bill, because not a mandate. It was no promissory note, because it contained no promise to pay. It was not a deed, because it had not the statutory solemnities: And it was not holograph of Cranston.—The confirmation conveyed the document, such as it was; but it could not make it better; Erskine, b. 3. tit. 2. § 28.

THE COURT refused the petition without answers.

A second petition was likewise refused without answers.

The Court were nearly unanimous. It was *observed* on the Bench, That from the books of the deceased, and the partial payment, it was evident who was meant to be drawer, which was sufficient in an action for payment of the debt, which this was, not a charge upon the bill. It was likewise said, that a blank acceptance, found in the repositories of a defunct, may be filled up by his representative, and diligence may proceed in his name.

For Pet. *John Clerk.*

Agent, *Wm Riddell, W. S.*

Clerk, *Home.*

#### SECT. IV.

#### Decisions on the Act 25th, Parliament 1696.

\* \* \* By this statute it is ordained, That for hereafter no bonds, affignations, dispositions, or other deeds, be subscribed blank in the person or persons name, in whose favour they are conceived; and that the foresaid person or persons be either insert before or at the subscribing, or at least in presence of the same witnesses; who are witnesses to the subscribing before the delivery; certifying that