

No. 17. brought an action before the Magistrates of Dundee against Moss for payment of the bill, and also of some additional advances, which it appeared from the jotting on the bill had been made to him by the bankrupt.

The Magistrates decerned for payment. Upon this Moss presented a bill of advocacy, and

Pleaded: By the act 1696, C. 25. all written documents and obligations are null which are drawn blank in the name of the creditor. The bill founded upon in the present case cannot therefore afford a ground of action, as there is neither the drawer's subscription annexed, nor the creditor's name mentioned in the body of the writing, and which consequently is "blank in the name of the person in whose favour it is granted." Although the act of Parliament makes an exception of the indorsation of bills, there is no exception with respect to the bill itself, which assuredly falls under the statute; Erskine, B. 3. T. 2. § 28; Creditors of Craig against Brand, February 13th, 1711, No. 21. p. 1679; Walkinshaw against Campbell, January 8th, 1730, No. 23. p. 1684; Henderson against Davidson, July 27th, 1738, No. 25. p. 1686. This radical defect is not remedied by indorsation, because if the bill itself be null and void, the indorsation can convey nothing; Tinw. February 15th, 1749, Grant, mentioned by Erskine, B. 3. T. 2. § 28. Neither can the indorsation afford proof of the person to whom value was paid; for indorsations are often used merely for the purpose of giving currency to bills of exchange.

Bills are sustained as probative writs entirely from favour to commerce, and in obedience to mercantile law; otherwise they are void, by the act 1681, as wanting the names of the writer and witnesses. But to entitle a bill to its extraordinary privileges, it must be a proper mercantile document, executed in the form usually practised among merchants, and for the purposes for which bills of exchange are generally employed. This pretended bill, however, is not executed according to the custom of merchants, being defective in an essential requisite, and is evidently not a mercantile document; so that by the act 1681, it is null and void.

Answered: The act 1696, C. 25. applies not to bills of exchange, but only to bonds, assignments, and such deeds as require attestation by witnesses. The indorsation of bills, accordingly, is introduced, not as an exception, but as a declaratory explanation. It is very true, in our early practice, when the nature of bills was not so thoroughly understood, a different construction was given to the statute. But, for these many years, the decisions, agreeably to the great facilities afforded to mercantile transactions, have confined the enactments of the statute to writings executed according to the direction of the act 1681; Cathcart against M^r Hutcheon, November 25th, 1748, No. 41. p. 1439; Douglas and Hood against Logan, 1748, No. 41. p. 1438; Crichton and Dow against Syme, July 1772, No. 328. p. 17047; Carrick, 29th May 1790, No. 1734. p. 1614; Brown against Campbell, November 28th, 1794, No. 337. p. 17058; Fair against Cranston, July 11th, 1801, No. 19. p. 1677.

With respect to the argument founded on the act 1681, it will be remembered, that at an early period much jealousy was entertained by the Judges, both in England and Scotland, with regard to the extraordinary privileges of bills of exchange, and various difficulties occurred, which were all in process of time, removed; Holt's reports, p. 113. 1. Salkeld, 130. Trin. Tudhope against Turnbull, June 22, 1748, No. 100, p. 1510. The bill in the present case, although left blank in the name of the drawer, is possessed of all the essential requisites to constitute a debt. The acceptance imports the receipt of the money for which it was granted, and also an obligation to pay it. Wherever, therefore, a person accepts a bill which is blank in the name of the drawer, he becomes bound to pay the person who can show he has a right to the debt. It is of no consequence whether it has the drawer's name upon it, provided it can be clearly shown in whom the *jus exigendi* exists; February 8, 1785. Drummond against Creditors of Drummond; No. 47. p. 1445. Hare against Geddes, November 22, 1786, No. 48. p. 1446.

No. 17.

The bill of advocacy was passed; and the Lord Ordinary assqilzied the defender.

But the Court upon advising a petition, with answers, altered the interlocutor of his Lordship, and "repelled the defence founded on the plea, that the bill is not probative; find the defender liable in the expenses hitherto incurred; remit to the Lord Ordinary to ascertain the same, and to hear parties farther on the other points of the cause."

Lord Ordinary, Methuen.
Alt. Erskiner

Act. Craigie.
Agent, Jo. Macglashan.

Agent, Alex. Duncan, W. S.
Clerk, Ferrier.

F.

Fac. Coll. No. 169. p. 382.

1805. June 5. HILL against MENZIES and ANDERSON'S TRUSTEE.

FRANCIS HILL, manufacturer in Malmsbury, having employed Menzies and Anderson as his agents in Scotland, became their creditor to a considerable amount. Among other bills which he received in order to discharge this debt, were five, drawn by them upon John Anderson in London. Upon being presented, they were accepted by him, and discounted by Mr. Hill. Before they became due, Menzies and Anderson stopped payment, which was notified to him by a circular letter, in the usual form. In consequence of their failure, the acceptor also failed, which event was also notified to Mr. Hill, who was, at the same time informed, that no money had been put into the acceptor's hands, and that therefore they could not be retired when due. Mr. Hill was accordingly obliged to retire them himself, and entered a claim upon the sequestrated estate of Menzies and Anderson for their amount.

No. 18.

When the drawer has no funds in the hands of the acceptor, the indorsee need not protest it for non-payment, in order to preserve his recourse against the drawer.

Upon the part of the trustee it was objected, that recourse was lost against