

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.

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 5.

No 6.
Found, that
after arrest-
ment, the ar-

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.

No 7.
 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