

No 24.

In an answer it was *argued*, That the document was no bill at the time of the arrestment, being blank as to the creditor. It was an acceptance in favour of no one, since it constituted no body creditor before the subscription of the drawer. The money was lawfully attached before it was brought under the comprehension of any bill. The writing cannot be considered as a bill at the date it bears; because the fact is otherwise, and there intervened a mid impediment to hinder it from becoming a bill at all. As to the mode of proof; the nature of the thing in matters of falsehood, fabricating, or antedating, requires a proof *prout de jure*. Neither the act of 1621, nor that of 1696, make any difference betwixt indorsations of bills to create preference, and any other transmission of a bankrupt's effects for the same purpose.

THE LORDS adhered, 'in respect it was not a bill until it was signed by the drawer.' See No 34. p. 1435. and No 95. p. 1508.

For Petitioner, *Ro. Craigie*.

For Respondent, *Ro. Dundas*.

Session Papers in Advocates' Library.

* * * See M'Aul against Logan, No 9. p. 1694.

No 25.

A bill, blank in the drawer's name, was delivered in that state, before the money was paid, and afterwards filled up when payment was made. Found effectual.

1738. July 27.

HENDERSON against DAVIDSON.

IN a reduction of a bill upon the act 1696, as being blank in the drawer's name when accepted, and the same being referred to the creditor's oath, he deponed, 'That the bill was left blank in his hands, as a fund of credit for procuring the loan of the sum therein mentioned; that within two days he himself made up the sum, delivered it to the acceptor, and thereupon subscribed his own name as drawer.' The act statutes, that the creditor's name be inserted before delivery; and some of the Lords were of opinion, that by this was meant the delivery of the deed itself, which would make the bill in this case null; but it carried to sustain the bill, because, in the eye of law, it was not considered as a delivered evident until the money was advanced; at which time, and no sooner, did it commence to be a *jus crediti*. See No 35. p. 1435.

Fol. Dic. v. I. p. 104.

See Beatie against Dundee, Durie, p. 678. *voce WRIT.*

Keith against Robertson, Durie, p. 199. *voce PROOF.*

Hamilton against Creditors of Monkcastle, Stair, v. 1. p. 660. *voce PRESUMPTION.*

Gibson against Fife, Stair, v. 2. p. 434.; Dirleton, p. 160. *voce PAYMENT.*

Henderfon against Monteith, Stair, v. 2. p. 628. *voce PRESUMPTION.*

Monteith against Calender and Gloret, *voce ASSIGNATION*, p. 832.

Cochran against Houston, Forbes, p. 691. *voce PROOF.*

Donaldson against Donaldson, Kilkerran, p. 92. *voce MINOR NON TENETUR, &c.*

Alifon against Williams, Kilkerran, p. 93. *voce WRIT, PRIVILEGED.*

See APPENDIX.