

all writs otherwise subscribed, and delivered blank as said is, shall be declared null. Indorsements of bills of exchange, 'and the notes of any trading company,' are excepted from the operation of this act of Parliament.

1707. *March 15.*

The EARL of LEVEN *against* JOHN SCOT of Gilmercleugh, and FRANCIS ARMSTRONG of Whitehaugh.

THE Earl of Leven having charged Gilmercleugh and Whitehaugh upon their bond for L. 6000 Scots, with annualrents and penalty; they suspended upon this reason, that the bond was blank in the creditor's name, and so null by the act 25th Parl. 1696.

Answered for the charger: That the act annuls only bonds thereafter to be subscribed blank, and this bond was subscribed before the act.

Replied for the suspenders: Albeit the bond was subscribed before, it was not delivered till after the act; and bonds in the sense of law are to be understood *cum effectu*; an undelivered bond not being *vinculum juris*. Nor does the act of Parliament discharge only the signing of a blank bond, but requires, that at least at delivery, it be filled up before the same witnesses; which shews that law regards not the time of signing, but delivery.

Duplied: There is no place left in this act to conjecture about the meaning of the words; for it reprobates only bonds thereafter to be subscribed blank, unless some cautions be observed, and makes no mention of blank bonds subscribed before.

THE LORDS sustained the bond charged upon, in respect it was of a date anterior to the act of Parliament anent blank bonds.

Fol. Dic. v. I. p. 104. Forbes, p. 151.

1711. *February 13.*

SIR ALEXANDER BRAND *against* JAMES ANDERSON and OTHERS, Tennants of Riccarton.

MR ROBERT CRAIG of Riccarton being debtor to Sir Alexander Brand of Brandsfield, he draws a bill on Anderson and Gordon, two of his tenants, for 1090 merks, payable to Sir Alexander, who accepts; but the other creditors compare, and object that this bill is null by the 25th act 1696, declaring that all bonds and other deeds subscribed blank, in the person's name in whose favours they are conceived, shall be void and null: But so it is, this bill was blank in the creditor's name, as appears from ocular inspection, being both filled up by a different hand and ink, *ex intervallo*; it being originally "pay to _____," and shewn to severals, and offered to them as it stood blank; and at last he and Sir Alexander agreeing, Sir Alexander's name was filled up therein; and there-

No 20.

The Lords sustained a blank bond, though it was not delivered till after the act of Parliament, because it was subscribed before it.

No 21.

A bill being drawn blank in the creditor's name, the Lords found that such bills fell within the compass of the act, and that the bill was null; the exception in the act regarding only indorsements.

No 21. fore, being contrary to so clear, express, and recent law, it is plainly null.—*Answered*, The act of Parliament no ways extends to bills of exchange, and being correctory, must be strictly interpreted; and if we may reason from the title of the act, it only concerns blank bonds. It is true, arguments and consequences *a rubro ad nigrum* do not always hold; yet where dubiety arises from the dispositive and statutory words, the rubric does frequently help to clear the same. *2do*, The said act only relates to writs requiring witnesses; for it declares these blanks shall be filled up in presence of the witnesses before they subscribe; so it only reaches blank writs that *de solemnitate juris* need witnesses; but it is *triti juris* that bills by the law of nations require no witnesses.—*Replied*, The act not only speaks of blank bonds, but *other* deeds, which must certainly comprehend bills; and it were very dangerous to allow the practice of blank bills. Besides, the exception in the act puts it beyond all doubt, speaking only of indorsations of bills and notes of trading companies, so that *omnis exceptio* being *de regula*, it must confirm it *in casibus non exceptis*; and *esto*, there were the same parity of reason for extension of bills; yet law does not allow it. And though they do not require witnesses, yet holograph writs would be null, if blank in the creditor's name, though they stand good without witnesses, being an exception from the 117th act 1540, discharging any faith to be given to writs wanting witnesses.—THE LORDS found bills fell within the compass of the said act against blank writs; and that it was null: But the next question arose, Whether its being blank was probable by witnesses, or only by Sir Alexander, the haver of the bill, his oath? See PROOF.

Fountainball, v. 2. p. 636.

* * * Forbes reports the same case :

IN the suspension raised by the tenants of Riccarton of a charge upon their accepted bill of exchange, at the instance of Sir Alexander Brand; the LORDS found, That the act 25th, ses. 6th, Parl. King William, discharging blank writs, doth extend to bills of exchange, though not to the indorsations of bills; the latter, and not the former, being expressly excepted therein. Albeit it was alleged there was no difference betwixt a bill, blank in the possessor's name, and one payable to the bearer, which would not fall under the statute; and indorsations, being the assignments or conveyances of bills from hand to hand, are to be supposed of the same nature with, and no more privileged than the bills indorsed; as assignments to bonds require the same formalities, with the bonds assigned.

Fol. Dic. v. 1. p. 104. Forbes, p. 495.