blank in the drawer's name. For this indeed there was reaſon. It became an additional check againſt Forgery; and, without the ſubſcription of a drawer, the contract ſuppoſed in a bill is imperfect, and the poſſeſſor is deprived of his recourſe, No 23.

As to bills ſubſcribed both by drawer and acceptor, but blank in the name of the creditor, there can be no reaſon for comprehending theſe more than blank indorſations under the act. Both are in preciſely the ſame ſituation; and, in the ſpirit of the act, a bill blank in the creditor's name, ought to be exempted as well as one blank in the indorſation. The law is correctory, and ought rather to be reſtricted than extended in interpretation. It is beſides worthy of notice, that a bill 'payable to the bearer,' is in fact not truly a *blank* writ in any reſpect. The drawer is in fact the creditor. The *bearer* is 'his order.'

All this argument was diſregarded.

Fol. Dic. v. 1. *p.* 104. *Seſſion Papers in Advocates' Library.*

1734. *February* 14. NEILSON *againſt* RUSSEL.

No 24.
An arreſtment of the ſum in a bill uſed before the drawer's ſubſcription was adhibited, was preferred to a ſubſequent onerous indorſation.

LUDOVICK GORDON, merchant in Inverneſs, drew a bill on Sir Robert Gordon, for L. 237 : 13 : 7, which was accepted.

The drawer's name was in the body of the bill; but his ſubſcription had not been adhibited, when William Neilſon uſed an arreſtment in Sir Robert's hands.

Ludovick Gordon, after this, ſubſcribed as drawer, and indorſed the bill to Francis Ruſſel.

Sir Robert raiſed a multiplepoinding; and the cauſe having been reported, 'THE LORDS found it relevant to prefer the arreſter, that the bill was not ſubſcribed by the drawer at the time it was accepted by Sir Robert Gordon, nor before his arreſtment; and ſuſtained the ſame probable by William Neilſon, *prout de jure*; and *ſeparatim* found, that the indorſation being made in prejudice of William Neilſon's prior diligence, was reducible, at his inſtance, upon the acts 1621 and 1696, in ſo far as the indorſation was granted in ſatisfaction of anterior debts; but ſuſtained the indorſation *pro reliquo*.'

In a petition, an attempt was made to make out, 1*mo*, That the bill was not blank in the creditor's name, at the date of the acceptance; and therefore did not fall under the act 1696 againſt blank writs. 2*do*, That ſuppoſing the deed to have been incomplete at the date of the delivery to the indorſee or his agent, it was put in their power to complete it before it was indorſed, which they actually did, and that before it appeared in judgment; therefore it muſt be conſidered as complete from its date. 3*tio*, That the objection was probable only *ſcripto vel juramento* of an onerous indorſee. 4*to*, That the indorſation did not fall under the ſtatutes 1621 or 1696, relative to bankruptcy, as there was inſtant value given.

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. 1. *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.

Henderſon 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.

Aliſon againſt Williams, Kilkerran, p. 93. *voce* WRIT, PRIVILIGED.

See APPENDIX.