No 38.

And in general none doubted, but that the drawer might lawfully adhibit his ſubſcription at any time before the bill was produced in the judgment. But the queſtion here was, Whether the drawer could effectually adhibit his ſubſcription after the acceptor was become bankrupt, ſo as thereupon to compete with prior creditors.

David Dickſon, the defender, and conjunct acceptor of the bill purſued for, with James Home now bankrupt, and from whom he had a bond of relief, objected, that the drawer had not adhibited his ſubſcription till after the bankruptcy of Home; at which time the drawer could not, by his act, rear up a debt againſt Home, to compete with his prior creditors, which, before the bankruptcy, was void; and if, through the fault of the drawer, he, Dickſon, had thus loſt his relief, he could not be liable to the drawer in the debt; which the LORDS 'repelled.'

For as the bill ſtood upon the act of Home, prior to his bankruptcy, and required a new conſent of his to make it effectual, there was nothing in the circumſtance of Home's bankruptcy from which Dickſon's relief ſhould be loſt.

Fol. Dic. v. 3. p. 76. Kilkerran, (BILL of EXCHANGE.) *No 6. p. 71.*

1748. *June* 18. TURNBULL *againſt* TUDHOPE.

No 39.
A bill was accepted blank in the drawer's name; and a perſon, who had no title to it, filled up his own name. The indorſer's oath found not competent againſt the onerous indorſee.

THOMAS TURNBULL, merchant in Hawick, obtained a bill indorſed to him for value by Robert Taylor, tobacconiſt there; drawn by Taylor upon Robert Tudhope, fleſher there, for L. 20 Sterling, payable twelve months after date.

Tudhope ſuſpended, for that Taylor wanting ſuch a ſum, prevailed on him to borrow it from his aunt Jean Taylor, not inclining to let her be acquainted with his ſtraits; that the bill was accepted blank, in the drawer's name, and the money given to Taylor, on his bill to the ſuſpender of the ſame date; but Jean Taylor having left her bill in her nephew's hands, he had filled up his own name as drawer, and indorſed it for no value truly received: The charger therefore had no title to the ſecurity, which really belonged to Jean Taylor; or, if it was carried by the filling-up and indorſation, compenſation upon Taylor's bill was a competent defence; both on account of the gratuitouſneſs of the indorſation, and that the term of payment being a year after the date, the bill was not entitled to any privileges.

Turnbull condeſcended, that the cauſe of the indorſation was for L. 17 Sterling, which Taylor owed him, he being to account for the remainder; and the LORD ORDINARY, 17th January 1747, 'repelled the reaſons of ſuſpenſion, and found 'the oath of the indorſer could not be received againſt the charger, an onerous 'indorſee, ſo far as concerned the L. 17 Sterling.'

Pleaded, in a reclaiming bill, That the privileges of onerous indorſations were only competent upon bills of exchange, where one drew payable to another in the way of trade; not when a ſecurity for money was taken in this ſhape betwixt

No 40. two; that it had been made a doubt in this Court, whether inland bills of exchange barred compenſation; which was decided, on the advice of merchants, 24th June 1714, Fairholm againſt Cockburn, *infra h. t.*; but it ſurely could not then be ſuppoſed bills of this ſort would have that effect: This bill was, by its term of payment, deſigned for a permanent ſecurity, not a vehicle of money; and was indorſed for ſecurity of a former debt; which made a great difference betwixt this caſe and an indorſation for value truly paid: Beſide, the money belonged to Jean Taylor, as was offered to be proved by Taylor's oath, the beſt proof that could be got in the circumſtances of the caſe; and was partly evident from the dates, ſums, and terms of payment of the two bills; which being the ſame, they could not have been truly executed between the ſame parties.

Answered, The charger knew nothing of any tranſaction between Taylor and his aunt and Tudhope; he took the indorſation for value, as he had condeſcended, and nothing was more ordinary than indorſations for value in account. Inland bills, under which denomination bills of this ſort had always been comprehended, were, by ſtatute, in all reſpects, made equal to foreign ones; 12th December 1711, Erſkine againſt Thomſon, *infra h. t.*; and 31ſt January 1699, Stewart againſt Gordon and Campbell, *infra h. t.*; and the indorſer's oath was not competent againſt the indorſee.

THE LORDS adhered.

Act. *Veitch.* Alt. *H. Home.* Clerk, *Juſtice.*

D. Falconer, v. 1. *No* 261. *p.* 353.

*** *See* This caſe, as reported by Lord Kilkerran, and by Lord Kames, Div. 2. Sect. 2.

No 41. A bill found void and null as wanting the drawer's ſubſcription.

1748. *November* 9. DOUGLAS and HOODS *againſt* LOGAN.

WILLIAM CLARK, taylor in the Canongate, was boxmaſter to that incorporation for two years preceding Whitſunday 1742; and being, at accounting, found conſiderably in arrear, agreed to procure George Logan, laſtmaker there, to become bound with him for L. 70 Sterling; which was executed, by their accepting a bill, 12th November 1742, for that ſum to James Tyrie, then boxmaſter, and his ſucceſſors in office.

The accepted bill being ſhewn to the incorporation, it was obſerved, there was a miſtake in the draught, it containing theſe words, *due by William Clark in part payment of the balance of my last quarter accompts*, inſtead of *his*; whereupon, by order of the incorporation, the clerk and boxmaſter brought it back to Logan ſome time in January 1743, and deſired him to accept a new bill for L. 60, L. 10 being paid; but he took up the bill and carried it away, the drawer not having yet adhibited his ſubſcription thereto, and never granted any other.

John Douglas armourer, and Jean and Lilias Hoods, creditors of the incorpo-