

No. 50. 1751, Feb. 19. *KERR against HUGH CLERK.*

A SUBMISSION being entered into by the parties accepting each of them a bill to the other for sums of money with blank indorsations on the back, and depositing them in the arbiters hands, who thereby had it in their power to make these bills be for any less sum they pleased, by filling up a partial receipt in that blank, which they accordingly did in one of them, and gave up the other;—it was objected, that that deborted greatly from the nature and design of bills as instruments and vehicles of commerce, and was not a habile way of making submissions; which the Lords repelled;—though I own I demurred.

No. 51. 1751, July 24. *MONCRIEFF against MONCRIEFF.*

LORD KILKERRAN, Ordinary, found a bill of L.40 sterling granted by the deceased Sir Thomas Moncrieff, bearing annualrent from the date, void and null; and, upon a reclaiming bill very accurately drawn by Mr Craigie, we unanimously refused the bill and adhered. *Vide* the petition on which I have marked the former decisions on that question. 30th July We adhered, and refused a reclaiming petition without answers.

No. 52. 1751, Dec. 13. *MONCRIEFF against SIR WILLIAM MONCRIEFF.*

SIR THOMAS MONCRIEFF in 1719 accepted a bill to Sir Hugh Moncrieff of Tippermalloch for 700 merks, payable on demand, and in 1720 wrote a letter excusing his not having paid the money and promising annualrent. Moncrieff, pursuer, got a disposition from Sir Hugh of his effects, and of this among the rest, and sued Sir William as heir to Sir Thomas only in 1746. Kilkerran the Ordinary, because of the bills having lain so long over, found it not probative. The pursuer reclaimed, and insisted on sundry circumstances to account for the taciturnity; but we adhered in effect, only varied the words, and found that action did not lie for the money. In that same process we found annualrent due from the citation in this process, for a promissory-note of L.30 by Sir Thomas to Sir Hugh, dated in 1734, payable on demand; but this last was carried, *me et aliis renitent.*—particularly I think the President. In this process also Kilkerran found annualrent due only from citation in this process on a bill for 1000 merks, accepted by Sir Thomas to Sir Hugh in January 1736, and payable on demand. The pursuer reclaimed, and insisted for annualrent from the date,—but we adhered.

No. 53. 1752, Jan. 24. *DALRYMPLE against BAILIE LYON.*

THE Lords adhered to Drummore's interlocutor finding a bill bearing annualrent from the date null, and striking that sum out of an adjudication.

No. 54. 1753, Nov. 27. *JAMES CAMPBELL against DAVID GIBSON.*

A BILL upon Archibald Campbell as principal, and the said James Campbell as cautioner conjunctly and severally, and accepted by both, being suspended by the cautioner, for that a cautionary obligation could not be constituted by a bill, Kilkerran first sustain-

ed the objection; but afterwards, on the charger's allegation, James Campbell having been obliged to depone, and having acknowledged that the bill was all written by him, and that he agreed to become cautioner, and accordingly wrote the bill in that form,—that the charger objected to the word “cautioner,” and that the suspender answered that he would be bound in no other way,—Kilkerran altered his interlocutor and sustained the bill; and on a reclaiming bill and answers we adhered; for we thought he was bound first by his agreeing to become cautioner; 2dly, we thought it a fraud to induce the charger to accept of a null bill. But Drummore (in the Chair) doubted if that was a nullity.

No. 55. 1754, Feb. 20. LOOKUP *against* CREDITORS of CROMBIE.

I OMITTED to mark, 20th February, the case betwixt Andrew Lookup and Creditors of Crombie, touching two bills in 1722 for L.6 sterling, and another in 1724 for about three guineas, for which Lookup competed in 1752 or 1753; and Lord Strichen found them presumed paid; and on a reclaiming bill without answers, we altered a little the words of the interlocutor, and found that no action lies on these bills, and therefore adhered to the Ordinary's interlocutor, agreeably to our decisions in 1746, betwixt Moncrieff of Tippermalloch and Sir Thomas Moncrieff.—26th February.

---

BLANK WRIT.

---

No. 1. 1742, Dec. 21. CAIRNS *against* CAIRNS.

THE Lords found that a bond secluding executors with a substitution, that appeared originally blank, and afterwards filled up with a different hand, must be held as still blank as to the substitution, though the deed was before 1696, because it never was the custom to have substitutions blank where the creditor or disponee is filled up.

No. 2. 1749, Feb. 10. DONALDSON *against* DONALDSON.

A DISPOSITION by the pursuer's father to the deceased James Donaldson, his second son, of the lands of Barrachrae, redeemable for L.4, reserving his liferent and power to burden; upon it James, then in Maryland, was infest in December 1721, and 10th January 1722, Mr William, the father, executed a deed reciting the disposition, and in certain events burdening the lands with 12,000 merks, and died in 1723, and James possessed till his death in 1738; and in 1739, Mr William, the eldest son, pursued reduction of the disposition 1716, as being blank in the defender's name, and filled up with a different hand, and the filler up not designed, and it appeared *ex facie* to have been written blank, and filled up. As far as I could judge by the hand-writing, it was filled up by the granter, and two of the blanks still remained unfilled up to this day. The pursuer insisted on both the act 1681 and 1696. Answered, That it could be no nullity upon the act 1681, because blank writs remained valid deeds after that act, by which no more was intended but the writer of the body of the deed, but neither the