(DUE *ex lege.*)

1718. *November* 14. BAYNTON and SCHAW *againſt* SWINTON of Lochton.

No 2.
A bill of exchange bears annualrent againſt the accepter, from the term of payment, although not proteſted for not payment.

A QUESTION occurred betwixt theſe parties, If a foreign bill of exchange bears annualrent againſt the accepter, without being proteſted for not-payment?

And it was *argued* by Lochton the defender, for the neceſſity of proteſt, That though the act 20. Parl. 1681, was general, 'That the ſums contained in all bills 'of exchange bear annualrent, in caſe of not acceptance, from the date thereof; 'and in caſe of acceptance, and not payment, from the day of their falling 'due:' Yet from the whole tenor of the act, it appeared that the ſame was only to be underſtood of bills proteſted. The firſt clauſe, which relates to execution, was expreſsly ſo, 'That bills proteſted, &c. ſhall be regiſtrable within ſix months 'to afford ſummar execution:' The ſecond clauſe, touching annualrent, was a further effect of the bill's being proteſted and regiſtered within the ſix months, 'That the ſame ſhould bear annualrent from the date, if not accepted; and 'from the falling due, in caſe of acceptance and not payment:' And ſo the third clauſe, which is introduced like the ſecond, with an 'And further,' is obviouſly to be underſtood only of proteſted bills, viz. 'That it ſhould be leiſome to pur-'ſue for the exchange, if not contained in the bill, with re-exchange, damage, 'intereſt, &c. before the ordinary judge:' None of which were ever found due without proteſt.—It was argued *2do*, That the ſaid clauſe ſtatuting, 'That all 'bills ſhould bear annualrent, in caſe of not acceptance, from the date; and in 'caſe of acceptance, and not payment, from the day of their falling due,' could not poſſibly be underſtood in the firſt of theſe two caſes, of any other than proteſted bills; ſince without a proteſt for not acceptance, there is no recourſe competent againſt a drawer.

On the other hand, it was *argued*, That the clauſe was general, reaching *all bills*, proteſted or not proteſted. Before that act, while the practice of other nations was our rule in the ſubject of foreign bills, it was controverted whether annualrent was due upon them or not; which the Legiſlature intending to determine, did in general terms ſtatute, 'That all bills (*ſcil.* all foreign bills, theſe 'being the only ſubject matter of the act) ſhould bear annualrent, in caſe of 'not acceptance, from the date; and in caſe of acceptance, and not payment, 'from their falling due:' And the clauſe being immediately ſubjoined after the reſtricted caſe of bills duly proteſted and regiſtered, to afford ſummar execution, ſtatuting, not that *ſuch bills*, but that *all bills*, &c. ſhould bear annualrent, ſhewed plainly that both caſes were under the Legiſlature's view; that they were perfectly diſtinct, and the one caſe not to be limited or regulated by the other.—*Anſwered* to the *ſecond*, For the moſt part indeed, bills bear not intereſt againſt the drawer, unleſs proteſted for not acceptance: But the reaſon is, that the *principal* is not due without a proteſt; and it muſt be noticed, that the proteſt is no way neceſſary to make annualrent run, but to make the principal due. To clear

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this, let a caſe be put, where recourſe is competent againſt the drawer, without proteſt, for not acceptance; in that caſe it would reach the annualrent as well as the principal ſum: As for example, If there is a draught upon a perſon not the drawer's debitor, though there be no proteſt, the party who paid the money will recover it from the drawer, both principal and intereſt; and therefore the firſt caſe in the clauſe is to be underſtood of all bills whatever, proteſted or not, as well as the ſecond.

'The Lords found, That by the act 20. Parl. 1681, the ſums contained in 'all bills of exchange accepted, though not proteſted, bear annualrent from the 'day of their falling due.'

Fol. Dic. v. 1. *p.* 36. *Rem. Dec. v.* 1. *No* 15. *p.* 30.

1713. *July* 15.

John Watson, Merchant in Edinburgh, and Others, *againſt* James Gordon, Senior, Merchant there.

No 3.
Formerly decided otherwiſe than as above.

In an action at the inſtance of John Watſon, and Others, againſt James Gordon, for payment of a bill of exchange, drawn by Robert Gordon, merchant in Bourdeaux, upon, and accepted by the defender, payable to the purſuers—— The Lords found the defender not liable to pay annualrent for the ſum in the bill, from the time it fell due; in reſpect the bill was never proteſted for non-payment. *Fol. Dic. v.* 1. *p.* 36. *Forbes, p.* 703.

1740. *January* 22. James Tarras *againſt* Innes of Dunkinty.

No 4.
From what period a bill, payable three years after ſight, on which no demand was made for many years, ſhould bear annualrent.

George Brown being creditor to Innes of Dunkinty, by a bill for L. 120 Scots, dated in the 1715, indorſed the ſame to Robert Sanders; and after both their deaths, James Tarras, as executor-creditor to Sanders, brought a proceſs againſt Dunkinty, for payment; and the only queſtion betwixt them was, From what period the bill bore annualrent, it being payable *upon three days ſight thereof*, and bearing to be for caſh delivered to Dunkinty.

Pleaded for the defender: That at this diſtance of time he could not recollect upon what occaſion the bill had been granted; but as both the drawer and he lived in the ſame town together, for eleven or twelve years thereafter, and no demand thereon, though, from the face thereof, it does not ſeem to have been intended to lie over as a ſecurity, there is the greateſt reaſon to believe it has been paid. But whatever may be in that, he is entitled to plead, that as no proteſt was taken thereon, it muſt loſe all the privileges that would otherwiſe have been competent to it. A bill, by its own nature, and according to the conception of