

instead of initials, which are sufficient to validate such a writing, there is here the subscription of a notary, whose faith, in the affair of bills, is great; and two witnesses, specially required to his being desired to subscribe, both fully designed, and signing with him: So that there is no room left to doubt of the transaction's being fair and honest, as well as valid.

To the *second*, it was answered: That there is no reason for annulling a bill, because it bears a stipulation for interest from the time of the loan; as it is very common to accumulate the annualrent, from the date to the term of payment; and so render it a *sort*, bearing interest, in case the acceptor does not pay at the day prefixed; although it is plain he is thereby put in a worse condition: How hard then would it be, for the defender to lose his debt, for want of skill to cover the transaction? If the thing be lawful, it is not the worse for being fairly and openly expressed. As to the stipulation of annualrent on a bill before the term of payment's being discharged by the acts referred to, it was answered, *imo*, Granting it were true, still the adjecting such a stipulation is not sufficient to annul such a writing, but only that the stipulation should be ineffectual; for, notwithstanding such adjection, it would yet remain a bill, as having all the essentials of one, a drawer and an acceptor: So that the rule, *Usile per inutile non vitiatur*, behoved to take place. And, as to the instance of a bill with a penalty being found null, it does not touch the present question; since a penalty may be said not to be the subject of a bill, more than a legacy or donation. But, *add*, Neither of the acts will bear such a construction, the design thereof being only to authorize charges of horning to pass upon bills, which before were only the subject of an ordinary action; and therefore we are not to look there for a description of such deeds.

THE LORDS repelled the reason of reduction, founded on the notary's acceptance, and likewise the objection, That the bill bore annualrent from the date. See WRIT.

*Fol. Dic. v. 1. p. 96. C. Home, No 61. p. 106.*

1738. December 13.

JOHN GILHAGIE against JOHN ORR.

JOHN GILHAGIE of Kennyhill was sued before the Magistrates of Glasgow by John Orr of Barrowfield, for payment of 200 merks and annualrents, contained in a bill drawn by Jean Fleming upon, and accepted by, Gilhagie's father. It was dated May 1721. It contained *in gramin* a stipulation for payment of annualrent from the date, and was payable at the Whitfunday thereafter.

Mr Orr's title was that of executor-creditor to Thomas Orr, the husband of Jean Fleming, drawer of the bill. Jean Fleming had executed a general assignation in favour of her husband; and it was separately contended, that his *jus mariti* comprehended the bill.

After the process had depended for some time before the Magistrates, a new process was brought before the Commissary of Glasgow, because an objection had

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been made to Mr Orr's confirmation. The Commissary repelled the defences; Gilhagie offered a bill of advocacy, which Lord Haining, Ordinary, refused. Gilhagie then presented a petition to the Court.

*Pleaded* for the petitioner, That a bill, payable at the distance of 12 months, bearing *in græmio* a stipulation for payment of annualrent, does not fall *sub jure mariti*; and that no obligation, granted by a woman bearing annualrent *ex facie*, will fall *sub jure mariti* of a husband, to whom she shall happen to be thereafter married. The cases, Pitcairn against Edgar, Stair, v. 1. p. 290.; and Rollo against Brownley, Stair, v. 2. p. 436. *voce* HUSBAND and WIFE, were cited. But *separatim* that although the Court have sustained bills bearing clauses of annualrent, they never sustained such a one as the present, dated in 1721, payable 12 months after date, and never heard of till September 1738, in the hands of an executor-creditor, after both drawer and acceptor were dead.

*Pleaded* for Mr Orr, respondent, That the bill had lain so long over on account of the death of the original debtor, and of the promises of the petitioner to pay: That bills bearing annualrent, from their date, have been sustained, Henderson against Sinclair, No 20. p. 1418.; and that there is no occasion to dispute whether the bill fell under the *jus mariti* or not; because certainly it was comprehended under the assignation in the marriage contract, if not under the *jus mariti*.

The COURT 'repelled the objection of nullity to the bill, and found it fell under the *jus mariti*.'

For the Petitioner, *Arch. Hamilton.*

For the Respondent, *Cba. Maitland.*

*Fol. Dic. v. 1. p. 96. Session Papers in Advocates' Library.*

\* \* Lord Kames mentions, that, in this case, it was found that bills bearing annualrent *and penalty* are null; but nothing of this appears from the printed papers.

No 24.

1741. *January 24.* M'NEIL *against* CAMPBELL.

I FIND in the day-book of interlocutors, that, on report of Lord Kilkerran, the Lords sustained the objection to a bill, that it stipulated annualrent 17 days before the date.

And, of the same date, THE LORDS found, on report of Lord Justice Clerk, That a bill was good, though it bore a clause *with penalty conform to law*, because, by law, there was no penalty due.

*Fol. Dic. v. 3. p. 75. C. Home, No 162. p. 274.*

No 25.

1741. *Feb. 25.* PATERSON *against* FINLAYS.

A BILL bearing annualrent from the date, found null, notwithstanding of the many former decisions sustaining such bills; and a resolution taken by the Court, henceforth to find all such bills void.

*Kilkerran, (BILL OF EXCHANGE.) No 5. p. 71.*