

No 23.

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.*