

a gratuitous debt, which the Crown, coming in place of the forfeiting person, was bound to pay. No 29.

THE LORDS sustained the claim.

Reporter, *Strichen.*

A&H. *Home.*

Alt. *A. Home.*

Clerk, *Pringle.*

Fol. Dic. v. 3. p. 75. D. Falconer, v. 2. No 157. p. 181.

1750. December 11.

LOCKHART, against MIRRIE.

CAPTAIN LOCKHART of Kirkton accepted a bill, 20th May 1731, to William Lockhart of Birkhill, payable at Martinmas then next, with annualrent from the date till re-payment.

William Lockhart, younger, as assignee by his father the drawer, pursued Elizabeth Mirrie, who represented the acceptor; and she objected the clause for annualrent was inconsistent with the nature of bills.

THE LORD ORDINARY, 27th November, 'sustained the objection.'

Pleaded in a reclaiming bill: Since the act of Parliament 1681 has allowed creditors to trust to bills for security, not only of the sums due to them, but of the interest thereof; it cannot be said, that by the stipulation of interest, bills are made to deviate from their nature; and the adjection of a term of payment, is an evidence of the creditor's intention of calling in the money; which is not weakened by the stipulation of future annualrent, it being due by law; so that the objection would be as strong against all bills, since that act. It is usual to include the interest on the value paid in the bill; which has the effect of an accumulation at the term; and, if it were allowed to stipulate interest, it would enable the parties to draw their bills at such terms, as it would be convenient to make the payment, without either accumulating at that time, or shortening the term of payment, for the sake of giving currency to the interest, which would be an advantage to credit: As it is not the paying of interest annuls the bill, there is no reason, why it should not be expressly, rather than covertly, stipulated; and so the Lords have several times found; Dec. 1727, Henderfon of Gairdie against Sinclair of Quendal, No 20. p. 1418.; June 1737, Dinwooddie against Johnston, No 22. p. 1419.; December 1738, Gilhagie against Orr, No 23. p. 1421. It is true they found otherwise, 9th December 1747, the Lady Kinminity against Gordon of Embo*; but, it is submitted, if it would be equitable to annul this bill, drawn and accepted, at a time, when the Decisions of the Court stood for sustaining such bills.—THE LORDS refused and adhered.

For Pet. *Miller.*

Fol. Dic. v. 3. p. 75. D. Falconer, v. 2. No 170. p. 203.

* * Lord Kilkerran reports the same case:

In the process at the instance of William Lockhart younger of Birkhill against Elizabeth Mirrie, as representing Captain Lockhart her last husband, for pay-

* D. Falconer, vol. 1. No 221. p. 305.—*voce* PERSONAL and REAL.

No 30.
A bill payable at a certain term, with annualrent from the date, was found null.

No 30.

ment of a bill accepted by the Captain, payable to Birkhill, and conceived in the following terms: ' May 20. 1731. Pay to me or order, at the place of Fauldhouse, between the date hereof and the term of Martinmas next to come, the sum of 400 merks, with annualrent from the date till re-payment, value in your hands, &c. The point which has been often debated and variously decided, How far bills ought to be sustained, when containing a clause of annualrent, was here again stirred; when the LORDS, agreeably to the later judgments, ' found the bill null.'

It was *observed*, That in some at least of the cases where bills bearing a clause of annualrent had been sustained, viz. Henderson of Gairdie against Sinclair of Quendal, No 20. p. 1418.; Dinwoodie against Johnston, No 22. p. 1419.; Gilhagie against Orr, No 23. 1421.; the bills bore only annualrent from the date, whereas here it bears till re-payment. But not to mention, that a stipulation of annualrent for one term, imports an absolute stipulation for annualrent; the strength of the objection may seem rather to ly in the bill's bearing annualrent from the date, than in its bearing annualrent after the term of payment, which *de jure* it does. The plain truth is, the decisions have gone quite cross to one another; and as it was indecent to be coming and going; so the later judgments, the last whereof was in 1747, Sir John Gordon against Lady Kinminity, annulling the bill, were thought to be founded in principles. (*See Note under page 1427.*)

Where annualrent is covenanted in the bill, it becomes a security for money, not in the form of a bill, but of a *feudum pecunie*; and upon that ground the Lords would probably find the bill void, when only bearing annualrent after the term of payment, though that be no more, than it would do by law. At the same time, the annualrent till the term of payment may be thrown into the bill; as there is nothing in that, usurious, or inconsistent with the nature or form of a bill; and the devising of this method serves to show, that it was understood that annualrent could not be covenanted in the bill.

Kilkerran, (BILL OF EXCHANGE.) No 26. p. 89.

No 31.

A bill with a clause of interest, found null.

1751. July 30. MR JOHN MONCRIEF against SIR WILLIAM MONCRIEF.

MR JOHN MONCRIEF of Tippermalloch pursued Sir William Moncrief of that Ilk for L. 40 Sterling due by bill, granted by the defender's grand-father to the pursuer's predecessor, in these terms, ' Pay, at such a day, L. 40 Sterling, with interest, value received.'

Defence, The bill is null, containing a clause for interest.

THE LORD ORDINARY ' sustained the objection.'

Two bills were given in, *insisting*, That many bills were granted by bankers for money laid in their hands, with interest at four *per cent.*; at least it was ordinary to add to the address, *with that interest.*

Observed, The custom was for the acceptor to add a note to his acceptance, restricting the interest, which was no nullity; nor would it be any, if such a note