

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

were added to the address; as no stipulation for interest entered the bill. See No 7. p. 478.

THE LORDS 'adhered.'

Pet. R. Craigie & J. Sinclair.

D. Falconer, v. 2. No 228. p. 277.

No 31.

1757. November 15.

WILLIAM DOUGLAS and PATRICK LINDSAY, Merchants in Edinburgh, against  
ALEXANDER BROWN, Merchant in Edinburgh.

IN the ranking of the creditors of Robert Brown of Whitecroft, Alexander Brown produced, as his interest, a bill for L. 76:5:5 Sterling, dated in 1725, accepted by the common debtor, payable at a certain day, and bearing in it a stipulation of *interest from the date*. It appeared to have been taken for the amount of an account of goods, which was discharged at the time of the acceptance. Inhibition was executed upon this bill in the 1726, and followed by an adjudication.

*Objected* by Douglas and Lindsay, competing creditors, That the stipulation of interest from the date contained in the bill, renders it void and null; because bills are not intended to be subsisting securities for sums lent out upon interest; but are considered as bags of money passing like specie from hand to hand. The law has provided, that they shall bear interest against the acceptor from the term of payment, only *in pœnam* of his neglect of making payment at the precise term; and no interest is, *ex lege*, due upon them, when accepted, between the date and the term of payment, as till then the acceptor is not *in mora*. Where other stipulations are intended, the precise form of executing and testing an effectual obligation is directed by statute; and as bills, whether foreign or inland, make a singular exception from the general rule, wisely calculated to prevent frauds and forgeries, their privilege is lost by any material deviation from the known and established form of bills used in this and other countries: And, *a fortiori*, should it be so in a case like this, where a condition is introduced inconsistent with the very end and intention of bills.

*Answered* for Brown; *1mo*, The bill in question was accepted for full value received; and it would be very hard to forfeit a lawful onerous creditor, on account of a trivial mistake in drawing the bill. *2do*, It has all the known requisites of a bill *jure gentium*; and therefore cannot be annulled without the force of a statute. *3tio*, This addition to the bill cannot change it into a writ of another kind, not entitled to the privileges of bills; *1st*, because there is nothing unlawful in a creditor's taking interest from the date of his security on a debt then subsisting; nor is such a stipulation foreign to the nature of bills, especially inland ones, which, in general, were only intended to be securities for lent money, or debts; and, *2dly*, if it were foreign, it could not have the effect, by law, to vitiate a bill, otherwise good; but the condition must be held *pro non adjecta*. *4to*,

No 32.  
A bill bearing  
interest from  
the date  
found null.