

No 32.

was proposed; but without success, to remit the cause to the Ordinary, in order to give an opportunity to ascertain the debt by further evidence.

In advising a reclaiming petition for the adjudger, it was *urged*, That the bill was taken *anno 1725*; when, by the decisions of the Court, it was published to the nation, that bills with interest from their date were legal securities; and therefore, to cut down this bill is showing a sovereign contempt to the decisions of the Court of Session, as not in the least degree to be trusted or regarded. I proposed, therefore, that the bill should be sustained upon this particular medium, of being granted by the authority of the Court; and that an act of sederunt should be made against such bills in time coming. The interlocutor notwithstanding was adhered to; a lasting reproach upon the Judges who voted for it, as being insensible, or blind, to the grossest act of injustice, viz. the forfeiting a man for doing what was declared, at the time, lawful by the Sovereign Court of the kingdom.

Select Dec. No 136. p. 192.

1760. *January 2.*

ROBERT M'LAUCHLAN of that Ilk *against* ALLAN M'LAUCHLAN.

No 33.

A bill bearing annualrent and penalty, sustained, where the debt was acknowledged by the acceptor.

In the year 1726, Allan M'Lauchlan accepted a bill to Evan M'Lauchlan, for 1000 merks, *with annualrents and penalty, conform to law*; which is holograph of Allan the acceptor.

Robert M'Lauchlan acquired right to this bill. Allan paid the annualrents regularly for several years; but having at length refused payment, Robert brought an action against him.

Objected for the defender, The bill is null, as bearing annualrent and penalty.

Pleaded for the pursuer, *imo*, At the period when this bill was granted, the form in which it was executed was held legal. By decisions of a later date, the contrary has been found; but such decisions ought not to have a retrospect. *2do*, The words in the bill, 'annualrent and penalty, conform to law,' can have no effect. Annualrent is due, whether it be stipulated or not; penalty is not due, although stipulated: The words are therefore superfluous, and must be held *pro non adjectis*. The defender is barred, *personali exceptione*, from objecting this nullity; for that he himself both wrote the bill, and homologated it, by payment of annualrent for several years.

Answered for the defender, Bills were introduced for the benefit of commerce, to facilitate transactions, by supplying the place of ready money, but not to remain as permanent securities: That therefore the form of bills, in all trading countries, is precise and uniform; and in every country, except Scotland, their endurance is limited by a short prescription: But as in this country there is no statute of limitations, the Court has been the more attentive to define the nature and form of such slender securities; and to declare them void when they contain stipulations beyond their proper form. The consequences arising from their be-

ing employed as permanent rights in place of bonds, and other formal deeds, would be dangerous; therefore it has been found, by a series of decisions, that bills bearing annualrent and penalty are null. It is of no moment, that the bill is written by the defender. The form of every obligation is presumed to be the operation of the creditor; although it may be the act of the debtor, yet he is presumed to grant that sort of security which the creditor demands: To it therefore the debtor, when pursued, may object. The very stile of a bill is the language of the creditor making a demand, like the Roman stipulation; and therefore, if he makes an improper demand, and thereby frames an informal security, he has himself to blame.

'THE LORDS, as the debt was acknowledged, sustained the bill.'

A&. *J. Campbell, junior.* Alt. *Garden.* Clerk, *Kirkpatrick*
W. Nairn. Fol. *Dic. v. 3. p. 75.* Fac. *Col. No 206. p. 369.*

1790. *June 23.*

JOHN SWORD *against* JAMES BLAIR.

PETER RATTRAY granted to Blair a bill in these terms: '*Edinburgh, 8th January 1787.* Eight months after date, pay to me or order, the sum of One hundred pound Sterling, *with five per cent. of interest, at your house here, value in cash.*

'JAMES BLAIR.
'PETER RATTRAY.'

The bill was holograph of Rattray the acceptor. On the back of it the following receipt appeared: '*29th August 1787.* Received Two pounds ten shillings Sterling, as one half year's interest, by

'JAMES BLAIR.'

In a competition of Rattray's creditors, which took place before the Commissary-court, Sword, one of them, *objected*, That, in consequence of the stipulation of interest, the bill was null; and the Commissaries sustained the objection. This judgment was brought under review, by a bill of advocation; which the Lord Ordinary on the bills having refused, the question was stated to the Court in a reclaiming petition and answers. The complainer

Pleaded: Formerly it was no objection to a bill of exchange, that it bore a stipulation of interest before the term of payment; *Dict. voce* BILL OF EXCHANGE. Even at present a bill is good, if interest be not expressly so stipulated, though in fact it be exigible. Thus, a bill made payable '*at Martinmas, with the first year's interest, twelve merks and a half,*' was sustained; 10th June 1743. *Schaw contra Ruffel*, No 26. p. 1423.; as was also another, payable '*at Whitfunday, with a year's annualrent thereof;*' 2d November 1750, *Gordon contra King's Advocate*, No 29. p. 1426.

No 33.

No 34.

A bill bearing a stipulation for interest from the date, holograph of the acceptor, was sustained in a competition of creditors.