

1744, when he indorsed the bill charged on, he is not alleged to have been in these circumstances the 3d April preceding; and the indorsation, 11th May, was but in consequence of the bill drawn 3d April, and the same in effect as if it had been then indorsed, by the precedent note upon the back thereof, of the same date with the other bill. Besides, how can the act of Parliament 1696 be brought to regulate a bill of exchange, drawn by a London merchant, and indorsed to a London factor.

THE LORDS found the letters orderly proceeded.

*Forbes, MS. p. 79.*

No 62.

1727. June 28.

GRIERSON *against* EARL OF SUTHERLAND.

In this case, of which the particulars are stated, No 50. p. 1447. a bill drawn, payable to a third party, bore this clause, 'This, with the porteur's receipt, shall oblige me to repay the like sum to you, or your order.' The acceptor having paid the bill, indorsed the obligation for repayment; and, in a process at the indorsee's instance against the drawer, it was *pleaded*, that the indorsation was a valid transmission, not only because the obligation was contained in a bill, but that all obligations whatever are transmissible by indorsation; an indorsation being truly a bill. THE LORDS sustained the pursuer's title, in respect the obligation to repay was engrossed in the bill, and that the assignation implied an assignation.

*Fol. Dic. v. 1. p. 97.*

No 63.

1739. December 3.

THOIRS, *against* FRASER.

A BILL was drawn for payment of a sum, 'with annualrent and penalty.' It had been indorsed to John Fraser, whose creditor, Thoirs, arrested in the hands of George Fraser, who was debtor to John. George brought a suspension, on this ground, That the bill being null, as bearing annualrent and penalty, the indorsation, being but a relative writ, must stand or fall with the bill; therefore was likewise null.

THE LORD ORDINARY 'found the bill and indorsation void and null.'

*Pleaded*, in a petition: The indorsation bears expressly to be for value received. The nullity alleged against the bill is, that it stipulated a penalty and annualrent from a term preceding the date. It is acknowledged, that by a decision, Innes against Flockhart, in 1727, (No 19. p. 1418.), such bills are found to be null; and therefore no action is competent against the acceptor upon them: but it cannot be allowed, as a consequence, that if a bill, bearing penalty, should be drawn payable to a porteur for value received of him, the porteur would have no recourse against the drawer. The reason of the decision was not on account of defect of evidence in the writ, but because the Court would not sustain a writ of that nature for penal obligations. There is a strong feature of distinction be-

No 64.

An indorsation found to be a relative writ, which must stand or fall with the bill.