

No 4.

1725. February 16.—Mr Leslie, as indorsee to a bill drawn by one Fachney upon and accepted by Sir James's Lady, before their marriage, payable three years after date, charged for payment, which was suspended upon one ground, finally determined 18th of December 1724; and now it was *insisted*, *imo*, That the writ was not probative, as not having writer's name nor witnesses, and could not be considered as a bill, being so far remote from the nature and design of bills, that the term of payment was not till three years after its date. *2do*, Even suppose it were probative, yet it should have none of the extraordinary privileges of bills; and therefore compensation upon a debt due by Leslie's author, who was the original creditor in the bill, should be sustained.

It was *answered* for the Charger, That the writ charged on was in the exact form of a bill; and it could be no objection to it, that the term of payment was at a distant day, for that was regulated by agreement of parties, and not limited by any law to a particular time.

THE LORDS found, That the bill, being only payable three years after date, did not enjoy the extraordinary privileges of a bill of exchange, but was only to be considered as an ordinary debt. See BILL of EXCHANGE, Div. I. Sect. 2.

Reporter, *Lord Grange.* For Sir James, *Pat. Leith.* Alt. *Ch. & Jo. Erskine.*
Clerk, *Justice.*

Edgar, p. 132. & 170.

No 5.

1736. January 10. WILKISON *against* BALFOUR.

A RELICT having paid some of her husband's debts bearing annualrent, taking a discharge and not an assignation, her claim of relief was found to be simply moveable, and to fall under her second husband's *jus mariti*. See APPENDIX.

Fol. Dic. v. I. p. 385.

No 6.

1738. December 13. GILHAGIE *against* ORR.

A BILL which bore annualrent from its date, was found moveable *quoad* husband and wife. See No 23. p. 1421.

Fol. Dic. v. I. p. 385.

1739. February 23. DUNLOP *against* GRAYS.

No 7.
If the by-
gones of an
annuity bear-

THE LORDS found, That the bygones of an annuity, which fell due in the wife's viduity before her second marriage, fell under the *jus mariti* of the second husband, although by a clause in her first contract of marriage, in which the

annuity was constituted, the said annuity was to bear annualrent from the respective terms of payment thereof.

It appeared to the Court, That as the acts 1641 and 1661 had made nothing heritable that was not heritable before, nor indeed made any alteration as to the interests of husband and wife, the present question was to be determined by the law as it stood before these statutes, when these by-gones would not have been considered *æda pecuniæ*, but as *fructus*.

Some of the Lords having been of a different opinion, there was a reclaiming petition appointed to be seen and answered, but which was never advised.

Fol. Dic. v. 1. p. 384. Kilkerran, (HUSBAND AND WIFE.) No 3. p. 257.

No 7.
ing annual-
rent fall un-
der the *jus*
mariti.

1748. *June 7.* LADY WIGTON *against* LADY CLEMENTINA FLEMING.

THE LORDS found, That a lady's dressing plate were not paraphernalia, so as to exclude the *communio bonorum*. See APPENDIX.

Fol. Dic. v. 3. p. 278.

No 8.

1750. *January 11.* MUNGEL *against* CALDER.

PATRICK CALDER of Reidford, accepted a bill, payable to Janet Mungel, spouse to James Hastie of Boggo, in the following terms: ' Against Martinmas ' next, pay to me Janet Mungel, spouse to James Hastie of Boggo, or my or- ' der, secluding my husband's *jus mariti*, in the house of William Rannie mer- ' chant in Falkirk, the sum of twenty guineas, value in your hand received of, (signed) Janet Mungel.'

The charge on this bill was suspended on the following reasons, *1st*, That it was null, not being in the ordinary form and stile of a bill, as containing an exclusion of the husband's *jus mariti*. *2do*, The value by presumption of law, must have belonged to the husband, and it was not in the wife's power to exclude the husband's *jus mariti*; therefore the acceptor is not bound to pay to her but to her husband, against whom the suspender had a compensation to plead.

To all which the *answer* was, That the bill was granted as the value of a gown, which was agreed to be given to the charger, upon the sale of certain lands by Boggo to Reidford, and which did not fall under the *jus mariti*, and the husband nor his creditors had no interest in it.

Which the ORDINARY ' sustained, and found the letters orderly proceeded; ' and the LORDS ' adhered.'

Fol. Dic. v. 3. p. 278. Kilkerran, (HUSBAND AND WIFE.) No 17. p. 269.
VOL. XIV.

No 9.
A bill to a
wife, bearing
exclusion of
the *jus mariti*,
effectual,
where it is
for money
that does not
fall under it.