

No 23.

been made to Mr Orr's confirmation. The Commissary repelled the defences; Gilhagie offered a bill of advocacy, which Lord Haining, Ordinary, refused. Gilhagie then presented a petition to the Court.

Pleaded for the petitioner, That a bill, payable at the distance of 12 months, bearing *in græmio* a stipulation for payment of annualrent, does not fall *sub jure mariti*; and that no obligation, granted by a woman bearing annualrent *ex facie*, will fall *sub jure mariti* of a husband, to whom she shall happen to be thereafter married. The cases, Pitcairn against Edgar, Stair, v. 1. p. 290.; and Rollo against Brownley, Stair, v. 2. p. 436. *voce* HUSBAND and WIFE, were cited. But *separatim* that although the Court have sustained bills bearing clauses of annualrent, they never sustained such a one as the present, dated in 1721, payable 12 months after date, and never heard of till September 1738, in the hands of an executor-creditor, after both drawer and acceptor were dead.

Pleaded for Mr Orr, respondent, That the bill had lain so long over on account of the death of the original debtor, and of the promises of the petitioner to pay: That bills bearing annualrent, from their date, have been sustained, Henderson against Sinclair, No 20. p. 1418.; and that there is no occasion to dispute whether the bill fell under the *jus mariti* or not; because certainly it was comprehended under the assignation in the marriage contract, if not under the *jus mariti*.

The COURT 'repelled the objection of nullity to the bill, and found it fell under the *jus mariti*.'

For the Petitioner, *Arch. Hamilton.*

For the Respondent, *Cba. Maitland.*

Fol. Dic. v. 1. p. 96. Session Papers in Advocates' Library.

* * Lord Kames mentions, that, in this case, it was found that bills bearing annualrent *and penalty* are null; but nothing of this appears from the printed papers.

No 24.

1741. *January 24.* M'NEIL *against* CAMPBELL.

I FIND in the day-book of interlocutors, that, on report of Lord Kilkerran, the Lords sustained the objection to a bill, that it stipulated annualrent 17 days before the date.

And, of the same date, THE LORDS found, on report of Lord Justice Clerk, That a bill was good, though it bore a clause *with penalty conform to law*, because, by law, there was no penalty due.

Fol. Dic. v. 3. p. 75. C. Home, No 162. p. 274.

No 25.

1741. *Feb. 25.* PATERSON *against* FINLAYS.

A BILL bearing annualrent from the date, found null, notwithstanding of the many former decisions sustaining such bills; and a resolution taken by the Court, henceforth to find all such bills void.

Kilkerran, (BILL OF EXCHANGE.) No 5. p. 71.