

1743. June 10.

SCHAW *against* MARION RUSSELL.

No 26.

A BILL being conceived in the following terms: ' November 11th 1741, ' Against Martinmas next, pay to me or my order, at ———, the sum of ' 250 merks, with the first year's interest, twelve merks and an half, value in ' your hand; Addressed to and accepted by John Schaw in Glentore.' The Lords were much divided, Whether the same was a valid bill?

A bill drawn payable twelve months after date, with the first year's interest, was sustained.

On the one hand, it was said to be null, as bearing annualrent from the date. On the other hand, it was said, that there was no more in this, or rather not so much, as what trading companies do every day, who, when they take their bills payable in six months, add the six months interest to the principal sum, whereby that interest comes to bear interest after the term of payment; whereas here only the principal sum bears interest after the term of payment, although the twelve months interest between the date and term of payment be also *in obligatione*.

Replied, That the cases are by no means similar; for, where the interest between the date and the term of payment is added to the sum in the bill, the bill is liable to no objection in its form; whereas here the bill is *ex facie* informal, as bearing a clause of annualrent, which, by the now established later practice, voids the bill.

THE LORDS ' sustained the bill' by the narrowest majority.

Fol. Dic. v. 3. p. 75. Kilkerran, (BILL OF EXCHANGE.) No 7. p. 71.

* * * C. Home reports the same case :

THE said John Shaw being creditor to Shaw of Wester Glentore by bill, brought an action against the defender, as representing the acceptor, for payment.

Objected: The bill was void, as bearing a clause of annualrent from its date. See February 1741, Paterfon *contra* Finlay, (*supra*.)

Answered: There were many decisions sustaining bills bearing a clause of annualrent, and the present case was nowise similar to the one quoted; for there the bill bore a clause of annualrent, in the same manner, as if it had been a bond: But, in the bill pursued upon, it only provides, that a year's annualrent should be paid, at the term in the bill, which was a year from the date, of which the tenor follows: ' November 11. 1731, Sir, Against Martinmas next to come, pay ' to me, or my order, in the dwelling-house of John Somerville of Glenhove, the ' sum of 200 merks and 50 merks Scots money, with the first year's interest, 12 ' and a half pounds Scots money, value in your hands,' &c. It was likewise observed to be the constant practice among bankers to add to the principal sum the current interest, betwixt the date of the bill and the term of payment.

THE LORDS found the defender liable for the principal sum and annualrents resting unpaid, and in time coming, while payment.

C. Home, No 236. p. 384.