

1750. *November 2.*

Lady HENRIETTA GORDON, HENRY LUMISDEN, and — GORDON, Executor of ANNE STEWART, *against* The KING'S ADVOCATE.

No 29.

A bill of this tenor, ' pay to me, &c. with an year's annualrent, value of both instantly lent you in cash,' was found good. The annualrent was in reality a principal sum, and not the fruits of the principal sum.

LADY HENRIETTA GORDON granted a factory, 17th January 1743, to William Taylor, writer in Edinburgh, to uplift the contents of the inventory given up by her as executrix, in the confirmed testament of Alexander Duke of Gordon, her father, empowering him to grant discharges, raise proceffes, if there should be need, and to prosecute the same until decret; to do diligence, and, in general, every other thing which belonged to the office of factory: Whereupon he obtained Charles Gordon of Tarperfy decerned in payment of 110l. Scots to the Lady, and to him as factor, for his interest: And, upon Tarperfy's being attainted of High Treason, entered a claim for the same upon his estate, in name of his constituent, signed by him as her factor:—To which it was *objected*, That by the act of Parliament, all claims ought to be signed by the parties making the same, or by the attornies or factors of the parties having the interest claimed; from which it appeared it was intended the attornies should be specially empowered for the purpose of claiming.

Answered, The claim is signed by the Lady's attorney or factor, which is in terms of the act: But, supposing a general factory would not be sufficient, he is factor for recovering this debt, for which he has obtained decret; and, that being directly to himself, he might have claimed in his own name.

THE LORDS repelled the objection to the subscription of Lady Henrietta Gordon's claim, and found it legally subscribed. *See WRIT.*

Henry Lumisden of Cushney claimed a bill of 244l. Scots, dated 31st December 1744; to which it was *objected*, That by the statute, all assurances and conveyances, made after the 24th June 1742, were deemed fraudulent; unless the onerous cause were proven: And if this were not to be understood of debts, as well as real alienations, any estate might thereby be fraudulently carried off.

THE LORDS sustained the claim. *See FORFEITURE.*

— Gordon Lady Tarperfy, as executrix of Anne Stewart, her mother, claimed a bill of 333l. Scots, granted in these terms: ' Against the term of Whitsunday 1746, pay to me Anne Stewart, &c. with an year's annualrent thereof; value of both instantly lent you in cash;' the date not apparent.—To which it was *objected*, The same was for a year's annualrent of the sum, which made it null: As also, it was only signed by the drawer's initials; and though bills so signed, by drovers or such like, had been sustained in favour of commerce, yet this was not granted in the way of trade; and also being betwixt conjunct persons, did not prove its onerous cause.

Answered: The bill was not for the sum with interest, till payment, but for one year's interest at the term of payment, which might have been added to the sum. It was signed in the only way Anne Stewart could sign, and her name was mentioned in the body of it: And it was no objection, though it should have been

a gratuitous debt, which the Crown, coming in place of the forfeiting person, was bound to pay. No 29.

THE LORDS sustained the claim.

Reporter, *Strichen*.

A&H. *Home*.

Alt. *A. Home*.

Clerk, *Pringle*.

Fol. Dic. v. 3. p. 75.

D. Falconer, v. 2. No 157. p. 181.

1750. December 11.

LOCKHART, against MIRRIE.

CAPTAIN LOCKHART of Kirkton accepted a bill, 20th May 1731, to William Lockhart of Birkhill, payable at Martinmas then next, with annualrent from the date till re-payment.

William Lockhart, younger, as assignee by his father the drawer, pursued Elizabeth Mirrie, who represented the acceptor; and she objected the clause for annualrent was inconsistent with the nature of bills.

THE LORD ORDINARY, 27th November, 'sustained the objection.'

Pleaded in a reclaiming bill: Since the act of Parliament 1681 has allowed creditors to trust to bills for security, not only of the sums due to them, but of the interest thereof; it cannot be said, that by the stipulation of interest, bills are made to deviate from their nature; and the adjection of a term of payment, is an evidence of the creditor's intention of calling in the money; which is not weakened by the stipulation of future annualrent, it being due by law; so that the objection would be as strong against all bills, since that act. It is usual to include the interest on the value paid in the bill; which has the effect of an accumulation at the term; and, if it were allowed to stipulate interest, it would enable the parties to draw their bills at such terms, as it would be convenient to make the payment, without either accumulating at that time, or shortening the term of payment, for the sake of giving currency to the interest, which would be an advantage to credit: As it is not the paying of interest annuls the bill, there is no reason, why it should not be expressly, rather than covertly, stipulated; and so the Lords have several times found; Dec. 1727, Henderfon of Gairdie against Sinclair of Quendal, No 20. p. 1418.; June 1737, Dinwooddie against Johnston, No 22. p. 1419.; December 1738, Gilhagie against Orr, No 23. p. 1421. It is true they found otherwise, 9th December 1747, the Lady Kinminity against Gordon of Embo*; but, it is submitted, if it would be equitable to annul this bill, drawn and accepted, at a time, when the Decisions of the Court stood for sustaining such bills.—THE LORDS refused and adhered.

For Pet. *Miller*.

Fol. Dic. v. 3. p. 75. D. Falconer, v. 2. No 170. p. 203.

* * Lord Kilkerran reports the same case:

In the process at the instance of William Lockhart younger of Birkhill against Elizabeth Mirrie, as representing Captain Lockhart her last husband, for pay-

* D. Falconer, vol. 1. No 221. p. 305.—*voce* PERSONAL and REAL.

No 30.
A bill payable at a certain term, with annualrent from the date, was found null.