

(DUE *ex lege.*)1748. November 22. KINLOCH of Gourdie *against* MERCERS.

DAVID KINLOCH of Gourdie pursued the Representatives of John Mercer, writer in Perth, for relief of a sum paid by his father, in which he had been bound for Mr Mercer.

Compensation was proponed on a bill drawn by Mr Mercer upon Gourdie, and accepted by him, payable to the drawer on fight; and interest was stated from the date, which was prior some years to the payment of the bond.

The Lord Ordinary, 15th December 1747, "found that the bill payable upon fight, being accepted by Gourdie, without any date to his acceptance, the demand of payment was made upon the date; and therefore, found that the bill behaved to bear annualrent from that time."

Pleaded in a reclaiming bill, Annualrent is not due on a bill, till there be delay of payment, and here was no delay, as the bill was payable at fight, which must be understood of a fight posterior to the acceptance, for that it was not then payable, is evident from the bill being taken for security, instead of payment of the money.

Answered: The bill was taken, money perhaps not being ready, to constitute the debt and make it bear interest. It was payable at fight, which, in bills of exchange, is understood to be at presenting for acceptance; and the same must be understood here, nor can any subsequent demand be necessary. Had it been payable two days after fight, it would not have been a question that it bore interest two days after the acceptance, and the same rule ought to obtain here.

"THE LORDS found, That the bill bore interest from the date."

Aft. P. Wedderburn.

Alt. Dav. Grame.

Clerk, Gibson.

Fol. Dic. v. 3. p. 28. D. Falconer, v. 2. No 12. p. 13.

* * * The same case is thus reported by Lord Kilkerran :

In a process at the instance of Kinloch of Gourdie, against the Representatives of John Mercer: The defenders pleaded compensation, upon a bill drawn by Mercer upon Gourdie, payable to Mercer at fight, and the question was, From what time the bill bore annualrent? Whether from the date, or from the demand of payment?

It is an usual thing to draw bills payable at fight to a third party, in the same or a distant country, and the fight or acceptance is the term of payment; but it is an improper stile where the bill is drawn, payable to the drawer, especially (and which probably was the case here), where they are together at the time; yet, when they are so drawn, the words, *at fight*, cannot, in that case, have a different signification from what they have in the other; and therefore, the acceptance is the term of payment, and there is no need of any other demand.

No 5.

A bill payable to the drawer at fight, accepted without date to the acceptance, found to bear interest from the date of the bill.

(DUE *ex lege*)

No 5. Accordingly, THE LORDS " found annualrent due from the date of the bill." For, being accepted without a new date, it was presumed to have been accepted of the date of the bill.

Kirkerran, (BILLS OF EXCHANGE) No 18. p. 83.

1749. November 24. JOHN FORREST against The Earl of SUTHERLAND.

No 6.
No interest found due on a bill accepted by a wife for necessaries.

ELIZABETH SHAW, milliner in Edinburgh, drew upon the Countess of Sutherland, 31st August 1742, for L. 49 Sterling, against Candlemas then next, being the balance of an account of goods furnished to her, including interest from the draught, which she accepted.

Application was made to the Countess for payment, and a process threatened; but, upon promises to pay at Whitsunday 1744, not raised till after the term; when it was insisted in by John Forrest, merchant in Edinburgh, indorsee to the bill. And the Lord Ordinary decreed with interest.

Pleaded in a reclaiming bill, A wife may take off necessaries, but cannot grant securities bearing interest; which, in this case, is not due *ex mora*, as the contraction was not made known to the Earl.

Answered: As a wife may bind her husband by contracting for what falls under her *præpositura*, so she may grant security for what she purchases, bearing interest from the ordinary time, to which credit is given; and the indorser did what was incumbent on her by demanding from the Countess, who, she doubted not, would inform her husband.

" THE LORDS found interest not due." (See HUSBAND and WIFE.)

Ac. H. Home.

Alt.

Clerk, Kirkpatrick

Fol. Dic. v. 3. p. 28. D. Falconer, v. 2. No 100. p. 115.

1751. December 13.

MONCRIEFF of Tippermalloch against Sir WILLIAM MONCRIEFF.

No 7.
A bill payable on demand, found to bear interest only from citation in the process.

SIR Thomas Moncrieff of that ilk, at Moncrieff 16th October 1719, granted bill to Sir Hugh Moncrieff of Tippermalloch, for 700 merks Scots on demand; and 11th January 1720, by missive, apologised for failure of payment, obliging himself to give annualrent until it were paid.

Sir Hugh Moncrieff at Edinburgh, 22d February 1732, accepted a draught of Mr David Moncrieff, son to Sir Thomas, for L. 16 : 16s. Sterling, payable to Sir Thomas on demand.

A promissory note payable on demand, found to bear interest from citation *ex bono et æquo*.

Sir Thomas, at Moncrieff, 21st June 1732, granted bill to Sir Hugh for L. 40 Sterling against Martinmas, with interest; and 20th April 1734, granted a promissory note for L. 30 Sterling on demand.