

tor's arrestment, carries right to as much of the clearance in their hands, as will satisfy the same; just as if the Major-General had assigned it to M'Gibben, and for his better payment ordered Mr Ramfay to pay the same when received; and therefore M'Gibben ought to be preferred.

THE LORDS preferred M'Gibben, the creditor in the bill.

Forbes, p. 422.

No 4.

1721. February.

PATRICK, VISCOUNT OF GARNOCK *against* The DUKE OF QUEENSBERRY.

JAMES, Duke of Queensberry, deceased, did, in June 1708, draw a bill on David Earl of Glasgow, of the following tenor:

“MY LORD,

“Be pleased to advance to John, Viscount of Garnock, upon the account, and for the use of Patrick, Master of Garnock, his eldest son, ten shillings *per diem*, commencing from the first of June instant; and that ay and while the said Patrick, Master of Garnock, be provided with a company in her Majesty's forces.
“This from, my Lord, your humble servant,

“QUEENSBERRY.”

On this title, the said Patrick, Viscount of Garnock, pursues his Grace the Duke of Queensberry, as representing the late Duke his father, for the sum of 10s. *per diem*, since the first of June 1708, and in time coming, until he be provided with a company in the forces; and for damages for non-performance.

The *defence* was, That this is no proper bill, and therefore must fall, as wanting writer's name and witnesses. And it was *contended*, That it is not every writing that hath a drawer, a person on whom it is drawn, and a creditor, that can be reckoned to have the privileges of a bill; which will be plain, by reflecting, that the only reason why these privileges are indulged to bills, proceeds from this, that they are looked upon as bags of money, passing from hand to hand, as a necessary medium of trade. If then it appear from the deed, that it neither is or can be looked upon in this manner, it is not in the power of private parties to give it those privileges; so that indeed a proper subject, namely, a sum of money to be paid at a certain time, is as essentially necessary to the nature of a bill, as a drawer, acceptor or creditor. Now, by this writ, there never was any design to transfer money from hand to hand; this could be no view in the transaction, but barely to grant a security: Besides, it is entirely gratuitous, without an onerous cause in money or merchandise, which of itself is enough to defeat it, it being inconsistent with the nature of a bill to be gratuitous; and therefore, if this writing be allowed to pass as a bill, then marriage-covenants, jointures to wives, aliments, in short, every thing that can fall under an obliga-

No 5.
An obligation to pay 10s. *per diem* until the person shall be provided with a company in the army, conceived in the form a bill, found null.

No 5.

tion, may be established by the form of a bill, which would confound all securities, and render ineffectual all our excellent regulations, that are designed to secure us against forgeries. It is true indeed, that from the favour of commerce, rights to merchandise may be conveyed without all solemnities of law; but then, though conceived by way of bill or precept, they have not the privileges contained in the said acts of Parliament, as was decided, *Lesly contra Robertson*, No 1. p. 1397.; *Douglas contra Erskine*, No 2. p. 1397.: But however the ordinary solemnities be dispensed with, on this account altogether, that the matter is *in re mercatoria*, though not precisely for money, when precepts concern the delivery of salt, meal, or other merchandise; to extend that to obligations, for daily or yearly prestations, during one's life, or to an uncertain event, would be to overturn the foundations of our law anent bills. Neither is this case similar to that of a bill drawn for a certain sum of money, payable in different parcels; which indeed is a proper subject in commerce, and only so many bills in one paper, as there are terms of payment; whereas here, the precept being for a daily prestation, can no more be a *medium* of trade than a life-right, or indeed any other *security* whatsoever, that can be figured in imagination; and, therefore, this improbate deed can never stand against the force of the good and laudable laws, made to prevent the ruin of families, by guarding against the artifices of forgers.

' THE LORDS refused to sustain this bill.'

Fol. Dic. v. 1. p. 95. Rem. Dec. v. 1. No 25. p. 55.

1722. December 6.

WILSON against SMITH.

No 6.

A BILL was drawn in the following form: ' Sir, against the first of January, pay to me, or order, at the Clerk's Chamber in Muffelburgh, the sum of L. 100, and that as the price of my growing crop of corn and grass in the town of Muffelburgh, which are instantly sold you at the foresaid price, by your humble servant, &c.'

THE LORDS found this an effectual bill, although it was *pleaded*, That it could not be considered as a proper bill, not being a simple acceptance of a draught for a sum of money, but really and truly a contract of sale.

Fol. Dic. v. 1. p. 95.

No 7.

It cannot vitiate a bill, to stipulate what would equally follow, though it were not expressed.

1738. February 21.

TROTTER against SHEIL.

A BILL was sustained in the following terms: ' Pay to me, or order, the sum of _____; and this, with my receipt, shall be a sufficient discharge of all I can ask or claim of you preceding this date;' though it was *pleaded*, That the bill was null, as containing a general discharge, incongruous to the nature and