

No 18.

The Court, in general, seemed to adopt the argument of the pursuer; which they did not consider as obviated by that of the defender.

THE LORD ORDINARY had repelled the defence; and on advising a reclaiming petition, with answers,

THE LORDS adhered to the Lord Ordinary's interlocutor.

Lord Ordinary, *Westball.*

A& Hen. Erskine.
Clerk, Hume.

Alt. W. Stuart.

Stewart.

Fol. Dic. v. 3. p. 75. Fac. Col. No 74. p. 113.

* * * See Barbour and Blackwood against Hair, Fac. Col. No 62. p. 95. 8th February 1753, *voce* HUSBAND and WIFE.

See Dowie against Millie, Fac. Col. No 254. p. 390. 2d February 1786, *voce* LEGACY.

S E C T. IV.

Of Bills with clauses stipulating Annualrent and Penalty.

No 19.

1727.

INNES against FLOCKHART.

A BILL bearing a penalty and annualrent, from a term preceding the date, found null; and no action competent against the acceptor upon it.

* * * This is the import of the above case as stated in the printed pleadings in Thoirs against Frazer, Sect. 8th of this Division. The statement of it in the case below is different.

No 20.
Bills are sustained, tho' bearing annualrent from the date, and before the term of payment.

1727. *December.* HENDERSON of Gairdie against SINCLAIR of Quendal.

SINCLAIR of Quendal being debtor for some feu-duties to Henderson of Gairdie, upon the 2d February 1725, accepted a bill for the bygones, payable 1st October thereafter, bearing interest from the date.

Against this bill, an objection of nullity was made; as not being of the proper nature of a bill; because it bore annualrent *in gremio*, not from the term of payment, but from the date. And it was urged, that bills are *stricti juris* writs of a certain form and tenor, against which there is no liberty to transgress: But here the clause objected against, is even contrary to the nature of bills; which bear annualrent after the term of payment only, *ob moram*; but never from the date. And the case was cited betwixt Innes and Flockhart, determined January 1727, (*supra.*) where a bill was found null, 'as bearing annualrent from the term of payment,