

(DUE *ex lege*.)

No 2.

this, let a case be put, where recourse is competent against the drawer, without protest, for not acceptance; in that case it would reach the annualrent as well as the principal sum: As for example, If there is a draught upon a person not the drawer's debtor, though there be no protest, the party who paid the money will recover it from the drawer, both principal and interest; and therefore the first case in the clause is to be understood of all bills whatever, protested or not, as well as the second.

'THE LORDS found, That by the act 20. Parl. 1681, the sums contained in all bills of exchange accepted, though not protested, bear annualrent from the day of their falling due.'

Fol. Dic. v. 1. p. 36. Rem. Dec. v. 1. No 15. p. 30.

1713. July 15.

JOHN WATSON, Merchant in Edinburgh, and Others, *against* JAMES GORDON, Senior, Merchant there.

IN an action at the instance of John Watson, and Others, against James Gordon, for payment of a bill of exchange, drawn by Robert Gordon, merchant in Bourdeaux, upon, and accepted by the defender, payable to the pursuers—
THE LORDS found the defender not liable to pay annualrent for the sum in the bill, from the time it fell due; in respect the bill was never protested for non-payment.

Fol. Dic. v. 1. p. 36. Forbes, p. 703.

No 3.
Formerly decided otherwise than as above.

1740. January 22.

JAMES TARRAS *against* INNES of Dunkinty.

GEORGE BROWN being creditor to Innes of Dunkinty, by a bill for L. 120 Scots, dated in the 1715, indorsed the same to Robert Sanders; and after both their deaths, James Tarras, as executor-creditor to Sanders, brought a process against Dunkinty, for payment; and the only question betwixt them was, From what period the bill bore annualrent, it being payable upon three days sight thereof; and bearing to be for cash delivered to Dunkinty.

Pleaded for the defender: That at this distance of time he could not recollect upon what occasion the bill had been granted; but as both the drawer and he lived in the same town together, for eleven or twelve years thereafter, and no demand thereon, though, from the face thereof, it does not seem to have been intended to lie over as a security, there is the greatest reason to believe it has been paid. But whatever may be in that, he is entitled to plead, that as no protest was taken thereon, it must lose all the privileges that would otherwise have been competent to it. A bill, by its own nature, and according to the conception of

No 4.
From what period a bill, payable three years after sight, on which no demand was made for many years, should bear annualrent.

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it, is not a security carrying interest by consent of parties; something must be done, upon the part of the creditor, to interpel the debtor before that interest can arise; and the least thing that can be imagined is, that there be a demand. And as, by the statute 1681, a protest is necessary, in order to obtain diligence; so it seems also to be implied, that the same thing shall be required to give a title to interest; and as a protest is necessary, in case of non-acceptance, so there is the like reason that this should obtain in the case of not payment, it being equally just that there should be a demand for payment as well as for acceptance, before a party be considered as *in mora*; which is also established by the law of our neighbouring nation, act 9. and 10. William III. c. 17. § 2. In the common course of dealings betwixt man and man, no debtor will be thought to be *in mora* that pays his debt as soon as it is demanded: And it would be a pretty extraordinary extension that the pursuer pleads for, to have the bill so constructed as if it had bore so many days after date, when, by the tenor of it, it bears to be upon so many days sight. These things are different in their nature, and must be different in their effects; and there is no more reason to presume, that the acceptance is of the date of the draught, than that it is of any other date betwixt that time and this; and as the draught is upon so many days sight, it can infer only from the nature of the thing, that the acceptor shall pay within so many days after payment is demanded.

Pleaded for the pursuer: That as the bill bears for cash delivered, there arises a moral certainty anent what was intended for the day of payment. *2do*, Though there appears to have been an inaccuracy in the writer of the bill, who, instead of inserting the word *date*, has made it *sight*; yet the intention must have been certain, even as to the day of payment, because it is impossible that the money, as expressed in the bill, could have been instantly delivered in cash personally to the defender, unless at the date of the bill Dunkinty had been present; and consequently three days from the date, that is, three days from or after the receipt of the money, the sum in the bill became due, and must bear annualrent; which is strongly fortified from this circumstance, that both drawer and acceptor lived in the same town of Elgin, where Dunkinty received the money, and where the bill is dated; which, therefore, is sufficient to instruct the acceptance to have been of the date of the bill. Nor can it afford any objection that the bill was not protested, as in the case of a bill drawn on a third party, and sent to a factor to have it presented for acceptance, or otherwise negotiated; seeing that rule cannot apply here where the drawer and acceptor were persons living in the same town, both present; the bill itself bearing that they were so, in as far as it expresses the value to have been cash instantly delivered, and as such accepted, at the same time that it likewise declares the bill to be payable upon three days sight: That, therefore, must signify three days after the acceptance and date.

THE LORDS found interest due on the bill three days after sight; which, in this case, they constructed to be three days after the date of the bill.

Fol. Dic. v. 3. p. 27. C. Home, No 141. p. 241.