

ing employed as permanent rights in place of bonds, and other formal deeds, would be dangerous; therefore it has been found, by a series of decisions, that bills bearing annualrent and penalty are null. It is of no moment, that the bill is written by the defender. The form of every obligation is presumed to be the operation of the creditor; although it may be the act of the debtor, yet he is presumed to grant that sort of security which the creditor demands: To it therefore the debtor, when pursued, may object. The very stile of a bill is the language of the creditor making a demand, like the Roman stipulation; and therefore, if he makes an improper demand, and thereby frames an informal security, he has himself to blame.

'THE LORDS, as the debt was acknowledged, sustained the bill.'

A&. *J. Campbell, junior.* Alt. *Garden.* Clerk, *Kirkpatrick*
W. Nairn. Fol. *Dic. v. 3. p. 75.* Fac. *Col. No 206. p. 369.*

1790. *June 23.*

JOHN SWORD *against* JAMES BLAIR.

PETER RATTRAY granted to Blair a bill in these terms: '*Edinburgh, 8th January 1787.* Eight months after date, pay to me or order, the sum of One hundred pound Sterling, *with five per cent. of interest, at your house here, value in cash.*

'JAMES BLAIR.
'PETER RATTRAY.'

The bill was holograph of Rattray the acceptor. On the back of it the following receipt appeared: '*29th August 1787.* Received Two pounds ten shillings Sterling, as one half year's interest, by

'JAMES BLAIR.'

In a competition of Rattray's creditors, which took place before the Commissary-court, Sword, one of them, *objected*, That, in consequence of the stipulation of interest, the bill was null; and the Commissaries sustained the objection. This judgment was brought under review, by a bill of advocation; which the Lord Ordinary on the bills having refused, the question was stated to the Court in a reclaiming petition and answers. The complainer

Pleaded: Formerly it was no objection to a bill of exchange, that it bore a stipulation of interest before the term of payment; *Dict. voce* BILL OF EXCHANGE. Even at present a bill is good, if interest be not expressly so stipulated, though in fact it be exigible. Thus, a bill made payable '*at Martinmas, with the first year's interest, twelve merks and a half,*' was sustained; 10th June 1743. *Schaw contra Ruffel*, No 26. p. 1423.; as was also another, payable '*at Whitfunday, with a year's annualrent thereof;*' 2d November 1750, *Gordon contra King's Advocate*, No 29. p. 1426.

No 33.

No 34.

A bill bearing a stipulation for interest from the date, holograph of the acceptor, was sustained in a competition of creditors.

No 34.

But if, in those instances, the objection were justly repelled, it ought not to be admitted in the present; where there is still less appearance of any express stipulation to the effect supposed. Although, indeed, interest due before the term of payment was truly received; that can have no influence on the terms of this bill; especially when even the accumulating of intermediate interest into one sum, along with the principal, is universally practised in the drawing of bills. Nor is it of any consequence, that the receipt appeared on the back of the bill, instead of being contained in a separate writing.

Besides, as this bill was holograph of the debtor, it is a legal voucher, independent of peculiar privileges. No special form of an obligation for repayment of borrowed money is required by law. It is sufficient that it be expressed in an intelligible manner, as is done in the present instance. The form, thus assumed, is not the worse for being that of bills of exchange.

Answered: That bills are exempted from the statutory forms, so necessary as a safeguard from fraud, is a privilege allowed for the expediency of commerce alone. Hence they ought not to be sustained, if employed for purposes foreign to their nature; as when they are made to supply the place of regular vouchers for money lent out at interest.

Though a bill bear a stipulation for interest, after the term of payment, it may be good; because interest becomes then due *ex lege*, the stipulation being only superfluous, and not inconsistent with its nature. But, to stipulate interest from the date, is to substitute bills in the room of regular securities for borrowed money, contrary to the design of the law. Bills, therefore, containing such a stipulation, are now held to be null and void; 23d February 1741, Paterson *contra* Finlay, No 25. p. 1422.; 11th December 1750, Lockhart *contra* Merrie, No 30. p. 1427.; 15th November 1757, Douglas and Lindsay *contra* Brown, No 32. p. 1429.; notwithstanding that, at a more early period, a different rule appears to have prevailed.

That the bill in question is so drawn, as to bear interest from its date, is evident; for it expresses that the interest, as well as the principal sum, is to be due at its term of payment. Besides, the receipt on the back of it shews, that the interest was actually so paid. And the objection ought to have the greater weight, as coming, not from the acceptor, but from his onerous creditors.

With regard to the plea founded on the bill's being holograph, it is sufficient to remark; that if viewed otherwise than as a bill of exchange, it could hardly be considered as importing any obligation whatever.

The Court were unanimous, that the law, as formed by the later decisions, annuls bills which stipulate interest before the time of payment; but several of the Judges doubted the propriety, of having gone farther than merely to disannul that improper paction; leaving those bills, in which it was contained, effectual in other respects. [No doubt seemed to be entertained of the illegality of the stipulation in this case. But the circumstance of being holograph, appeared chiefly to move the Court to sustain this bill, which, it was acknowledged, had been granted for a just debt.]

THE LORDS therefore passed the bill of advocation.

Lord Ordinary, *Dregborn*, For *Sword*, *Wight*. Alt. *Honyman*. Clerk, *Sinclair*.
Stewart. *Fol. Dic. v. 3. p. 76. Fac. Col. No 141. p. 280.*

No 34.

* * The following note, relative to the above case, appears under the *Errata* of the volume of the *Fac. Col.* from which the case is taken :—

Note. As to the opinion of the Court, in the case of *Sword contra Blair*, there is authority for now stating ; that what chiefly weighed with the majority of their Lordships, was not the circumstance mentioned ; but the general understanding and practice of merchants, regarding stipulations of interest in bills, *e. g.* bankers notes and East-India bills ; which indicated, that such of the later decisions as had set aside bills bearing a clause of interest, were erroneous ; and ought not to be followed as precedents.

See No 5. p. 477.

See APPENDIX.

S E C T. V.

The Drawer's Subscription.

1734. February 14. NEILSON against RUSSEL.

IN this case, where the drawer's name was in the body of the bill, but written with another hand, arrestment laid on in the acceptor's hands, before the drawer adhibited his subscription, was found good against an onerous indorsee. For here, the acceptor of the bill, was *ab ante* debtor ; and, after the debt was fairly attached by arrestment, it could not be transformed into a bill, to disappoint the effect of the diligence. *See* This case, Div. 2. Sect. 2.

Fol. Dic. v. 1. p. 96.

No 34.
The subscription of the drawer, an essential requisite.

1738. July 27. HENDERSON against DAVIDSON.

IT was agreed that a bill, blank in the creditor's name at the time of delivery, fell under the act of Parliament 1696, concerning blank writs. But where, in a reduction of a bill, upon that ground, the fact was referred to the defender's oath, who deposed that the bill was put in his hand, blank in the drawer's name, as a fund of credit for procuring the loan of the sum ; and that, within two days, he himself made up the sum, which he delivered to the acceptor ; and, at that time, subscribed his name as drawer ; the bill was sustained ; the plurality of the Lords being of opinion, that it was not to be considered as a delivered evident till the money was advanced.

Kilkerran, (BILL OF EXCHANGE.) No 2. p. 69.

No 35.
A bill was blank in the drawer's name at the time of delivery, but filled up before the money was actually advanced : found good.