

1749. June 16.

FORBES *against* YOUNG.

WHERE a bill was indorsed for value after the term of payment was past, recourse was found to ly against the indorser, notwithstanding that no protest was taken by the indorsee upon the refusal to honour the bill: The merchants of London, to whom the Lords had recommended to give their opinion upon the case, having reported, That where a bill is indorsed after the term of payment, it is not necessary for the porteur to protest, but only to present the bill as a letter of credit, and to demand payment, and to notify the refusal to the indorser in a reasonable time. See No 147. p. 1580.

Fol. Dic. v. 3. p. 91. Kilkerran, (BILLS of EXCHANGE.) No 22. p. 87.

No 191.

If payment of a bill, indorsed after the term of payment is past, be refused, the porteur must notify the refusal in a reasonable time.

1751. February 28. ROBERT FARQUHAR *against* CRAWFURD of Daleagles.

JOHN CRAWFURD of Daleagles granted a promissory note, 16th April 1749, obliging him to pay on demand, or make compt for the sum of L. 7 Sterling; and a bill for L. 22 Sterling; 22d July that year, to Robert Farquhar in Townhead of Catrine.

Robert Farquhar, in 1746, raised action for these sums against Adam Crawford Newal of Daleagles, as representing the granter, and obtained decret; which being suspended, the LORD ORDINARY, 7th February, ' Found the letters orderly proceeded.'

Pleaded in a reclaiming bill: In all other countries bills are not permanent securities: Lord Stair, speaking of their being probative, though wanting solemnities, says, if they ly over they would not be probative, b. 4. tit. 42. § 6. The Lords have often found no action lay on them after lying over, 5th December 1744, Homes against Anderson; D. Falconer, v. 1. p. 16. *voce* PRESUMPTION; 11th February 1747, Garden against Rigg, No 188. p. 1628.; 31st January 1749, Wallace against Lees, No 189. p. 1631.; and this bill has lain over for seventeen years. The note is presumed to have been included in the bill, as the obligation was to pay or account.

THE LORDS refused and adhered.

Pet. Brown.

Fol. Dic. v. 3. p. 91. D. Falconer; v. 2. No 206. p. 249.

No 192.

Action was sustained on a promissory note and a bill, although after 17 years, and the granter dead.

1754. February 20.

ANDREW LOOKUP, *against* JOHN CROMBIE and the CREDITORS of ARCHIBALD CROMBIE.

ARCHIBALD CROMBIE was debtor to Robert Richardson by two bills; the one dated 4th June 1721, payable 10th February 1722; and the other dated 15th June 1724, payable on demand.

No 193.

Found that no action could be sustained on bills

No 193.
which had
lain over,
without le-
gal demand,
for 30 years,
and where
the original
parties were
dead.

John Crombie, nephew and apparent heir to the said Archibald, brought a sale of his lands, and ranking of his creditors, in terms of the act of Parliament 1695.

In this process, Andrew Lookup, who had right to the above bills by indorsements, compared, and craved to be ranked for the sums thereby due.

It was *objected* by John Crombie and the creditors, That the bills having lain over about 30 years, without any legal demand being made, no action could now be sustained upon them.

Answered for Andrew Lookup : That although bills lose their extraordinary privileges in a very short time, yet they do not, by the law of Scotland, cease to be probative writings, or prescribe in less than 40 years; that they do not prescribe in 20 years, appears from the 9th act Parl. 1669, introducing the vicennial prescription of certain writs mentioned in the act, of which bills are none; and Sir George Mackenzie, in his observations on that act, says, 'That the Parliament refused to limit bills of exchange to this prescription.' And if so, they can fall under no shorter prescription, and there is no other period of prescription known in our law till that of 40 years; and to deny action on them because of the lapse of time, is, in other words, to find that they are prescribed. In the present case, the reason of their lying so long over, was the bad circumstances of the original debtor and his heirs, who put off the creditors with promises of payment.

Replied for John Crombie and the Creditors : That bills were introduced solely for the sake of commerce, and not to remain as permanent securities : That, by the law of England, and of most trading nations, they are limited to a very short period; and ought to be so with us also, being introduced in imitation of other trading nations; and to sustain action on them after 30 years, which have run since their term of payment, would be opening a door to forgery, as bills are executed with so few solemnities, that in most cases it would be impossible to discover the falsehood. And Lord Stair, L. 4. tit. 42. § 6. observes, 'That bills kept up for any considerable time are not probative.'

THE LORDS found that no action could be sustained on the bills.'

For Andrew Lookup, *Bruce*.

For Jo. Crombie, *Geo. Pringle*.

Clerk, *Pringle*.

Fol. Dic. v. 3. p. 91. Fac. Col. No 100, p. 149.

1757. December 10.

JOHN HAMILTON *against* THOMAS HAMILTON.

No 194.
Where a bill
was pursued
for after 21
years, and the
parties who
were both a-
live, could
adduce no

JOHN HAMILTON pursued Thomas Hamilton for payment of a bill of L. 15, accepted by him, and payable on demand to the pursuer. The suit was brought twenty-one years after the term of payment of the bill. John Hamilton did not allege, he had ever made a demand for payment before. Thomas Hamilton all the time had been in easy circumstances. The draft and subscription