

No 12. term of payment, compensation upon a debt due by the drawer to the acceptor, was found competent.

Some of the Judges were for sustaining compensation immediately after the term of payment. But the plurality were for continuing the extraordinary privileges of a bill as long as it can be the foundation of summary execution, that is, for six months. This case, therefore, must be considered as a precedent, putting the privilege of summary execution, and the privilege of barring compensation, upon the same footing, so as that both should be lost together.

Sel. Dec. No 190. p. 254.

1782. January 29.

ARCHIBALD MACARTHUR-STEWART *against* WILLIAM FULLARTON, and Others.

No 13.

A bill was made payable after the decease of the drawer. He lived 37 years after. Action refused on it.

ON 1st August 1743, John Stewart-Murray of Blackbarony, granted to Mrs Mary Stewart, his sister, a bill of the following tenor: 'Brother, Pay to me, at the first term of Whitfunday or Martinmas after your decease, L. 140 Sterling money, value received from your sister, Mary Stewart.—To John Murray of Blackbarony, Esq;—Accepts, J. St. Murray.'

Mr Murray survived the date of this bill thirty-seven years; having made an entail of his whole estate, real and personal, in favour, first of his sister, and next of Mr Macarthur-Stewart. Upon the death of that lady without issue, her executors demanded from the latter, then succeeding to the whole moveables, which had belonged to her brother, and were in her possession, deduction of the debt due to herself by the above bill.

Pleaded for the heir, A bill payable at a term posterior to the death of the granter, is truly a novelty; and, in the present case, that event did not happen for thirty-seven years after its date. As a document of debt, the bill in question must appear in a light equally extraordinary and dangerous. Should it be sustained to that effect, many new opportunities would arise of committing forgery with impunity. But perhaps it ought rather to be considered as constituting a legacy in a manner not authorized by law.

Answered, As this bill bears value received, so there is no evidence of its having been intended to constitute a legacy. It is therefore to be understood as a voucher of debt; to which it is no sufficient objection, that the reason of postponing payment till the death of the granter cannot be clearly shown; especially as the transaction occurred between persons so nearly related.

The Court did not view the bill as constituting a legacy. They thought, however, that the right which it contained was of so anomalous a kind, as not to be the proper subject of a bill; and therefore adhered to the Lord Ordinary's interlocutor, 'sustaining the objections to the bill.' *See* LEGACY.

Lord Ordinary, Gardenston. A&S. Wight. Alt. Hay Campbell. Clerk, Robertson.
Stewart. *Fol. Dic. v. 3. p. 74. Fac. Col. No 25. p. 45.*