

them to the vicennial prescription, and refused; that thus the decisions had gone, 4th February 1692, Lesly of Balquhain against Mrs Menzies, *see* WRIT; June 1728, Cowan against Wingate, *see* WRIT; 5th July 1734, Relict of Swan against Campbell, No 187. p. 1627.; 25th July 1732, Rodgers against Cathcart and Ker, *see* WRIT. No 188.

The bills were no ways suspicious, and the argument drawn from the forbearance was sufficiently obviated by letters of Mr Rigg's, produced, wherein he asked delays of a debt in general, which behoved to apply to this, as he did not produce the letters to which his were answers.

THE LORDS, 6th January 1747, found that no action lay on these bills which had lain over so long a time without demand, unless supported by Mr Rigg's oath upon the verity of the subscription to the acceptance: And on bill and answers adhered.

Reporter, *Elchies.*

A&t. *W. Grant.*

Alt. *J. Grant.*

Clerk, *Gibson.*

Fol. Dic. v. 3. p. 91. D. Falconer, v. 1. No 165. p. 216.

1749. *January 31.* WALLACE and CRAWFURD *against* LEES and CRAWFURD.

IT has been observed *supra* 11th February 1747, Garden of Troup against Rigg, that although the House of Peers had reversed the decree of the Court of Session, by which it had been found that no action lay upon the bill pursued for, in respect it had lain over for 28 years, yet that judgment had proceeded upon the circumstances of the case, and not upon the general point; which, therefore, was still entire should the case again occur.

Accordingly, it did now occur in the case of a bill for 500 merks, which had not been heard of since its date in 1722, after drawer and acceptor were both dead, when the LORDS, upon report, unanimously found, 'That no action now lay upon it.'

Kilkerran, (BILLS OF EXCHANGE.) No 20. p. 85.

* * * D. Falconer reports the same case:

CHARLES CRAWFORD, merchant in Glasgow, granted two bills for 500 and 300 merks, dated 16th April 1722, and 1st December 1724, with annual rent and penalty, to Janet Crawford his sister; who assigned them to Anne Crawford; and she in 1747, with concurrence of James Wallace of Wallacetoun, her husband, pursued the acceptor's representatives.

Pleaded in defence, The bills are null, as containing a penalty.

Answered, The nullity cannot be objected to these bills, seeing they were granted to an ignorant woman by her brother, a man versant in business, by whose hand they appear to be written; agreeably to the decision 26th November 1743, Garden of Troup against Mr Thomas Rigg, C. Home, p. 405. *voce* PER-

No 189.

Found that no action lay upon a bill which had lain over for about 25 years. Both drawer and acceptor were dead.

No 189.

PERSONAL OBJECTION; where it was found, that Mr Rigg having been lawyer for Mr Arrot, from whom Troup derived right, could not object the nullity of a bill granted to Mr Arrot by himself: And with regard to the 500 merks bill, there is a partial payment marked upon it, whereby it was homologated.

Replied, The acceptor was neither lawyer nor manager for his fister, nor is it admitted the bills are in his handwriting: The marking on a null bill does not prove any payment was made, and is dated twenty-three years before commencement of the process; and the allowing the bills to ly so long over, is pleaded as a reason why no action should be sustained upon them.

THE LORDS found, that the bills having lain over so long, and the granter being dead, there lay no action upon them.

Reporter, *Dun.*Act. *A. Pringle.*Alt. *Boswel.*Clerk, *Murray.**Fol. Dic. v. 3. p. 91. D. Falconer, v. 2. No 48. p. 46.*

No 190.

A bill had for 4 years lain over without protest or diligence. It was found not to exclude compensation against an onerous indorsee.

1749. February 1.

THOMSON against COLVILL of Ochiltree.

UPON the 20th August 1744, Henry Spence, writer in Edinburgh, granted a bill to Alexander Thomson, for L. 47 Sterling; and, at the same time, indorfed to Thomson a bill of Robert Colvill's, dated in July 1742; and Thomson, by a back note, declared that Colvill's bill was indorfed to him in security of the L. 47 contained in Spence's own bill, it being always in his (Thomson's) option, to do diligence upon the one or the other.

Prior to Colvill's accepting his bill to Spence, he stood bound as cautioner for him in a greater sum, which having now paid, it was for him *alleged*, That as he could have pleaded retention till he had been relieved of his cautionry, for now having paid the debt, he was entitled to compensation; and thereupon two points occurred in the process against him at the instance of Thomson as indorsee.

1mo, Whether compensation was not competent even against an onerous indorsee, where the indorfation was not in the way of commerce, but in security of a debt due by the indorfer, as it was in this case? *2do,* Whether the bill itself had not lost all its privileges, that only excepted of being transmissible by blank indorfation, by lying over since its date in July 1742, without protest or diligence done on it till November 1746 when this process was brought.

On the first point two cases were referred to for the defender, 15th January 1708, Crawford against Piper, No 110. p. 1524. where, on this ground, That the indorfation was in security of a prior debt, a general discharge by the indorfer was sustained against the indorfee; and 16th January 1713, Campbell against Graham, No 192. p. 1120. where the indorfation by Campbell, after he was bankrupt, was found reducible on the act 1696, the suspender proving that the indorfation was in security of a prior debt.