

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

were not denied by Thomas ; but he said, that in the clearance of accounts between them, he had neglected to take it up, and pleaded prescription against the bill. The circumstances brought by the parties, the one to show that it was a real, and the other that it was not a real debt, did not afford solid presumption on either side.

‘ THE LORDS found, That action lay on the bill, notwithstanding the elapse of time.’

Act. Hamilton-Gordon.

Alt. Miller.

Fol. Dic. v. 3. p. 91. Fac Col. No 65. p. 110.

No 194.
circumstances
inferring suf-
ficient pre-
sumption
either of its
being paid or
not; the
Lords sustain-
ed action.

1759. *January 9.*

MARY WALLACE and Others *against* JANET MURRAY.

MARY WALLACE and others, as executors of the deceased James Finlayson, moved an edict before the Commissaries of Edinburgh, in order to obtain themselves confirmed executors-creditors to John Murray, one of the principal Clerks of Session, on a bill for L. 40, accepted by John Murray 7th August 1724, and payable to James Finlayson, who was an extractor in Dalrymple's office.

Janet Murray, the daughter of John Murray, *alleged*, That this bill was not a legal document of debt, and could not be sustained as a title of confirmation, as it had lain over for thirty years without diligence done upon it, and had not been homologated by payments of interest, or otherwise : That there were also strong presumptions that it had been paid ; for that James Finlayson was in use to receive the clerk's dues, and to pay them to Mr Murray ; and if this bill had been really due, he must have retained payment of it out of these dues.

It was *answered* : That bills are probative by act of Parliament ; and as no prescription of them is established shorter than the long prescription of forty years, they are legal documents of debt within that period. The presumption of payment arising from the long taciturnity, can be of no weight in this case ; for James Finlayson, being an extractor in the same office with Mr Murray, was of course much under his subjection, and would not incline either to raise diligence on this bill, or retain payment of it out of Murray's dues of office.

It was *alleged*, That Mr Murray had, some time before his death, acknowledged the debt to be resting owing ; and several witnesses being examined, they deponed *negatively*.

The Commissaries sustained the objections to the bill, and refused to confirm the movers of the edict. The pursuers applied to the Court of Session by bill of advocacy.

‘ THE LORDS refused the bill of advocacy, and remitted the cause *simpliciter* to the Commissaries.’

Reporter, *Lord Justice-Clerk.*

For Murray, *Lockhart.*

Fac. Col. No 158. p. 281.

No 195.
Action refused
on a bill
which had
lain over 30
years. The
granter was
dead.