

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.