

No 196.

Action was brought on a bill more than 20 years after its date, but some months less than 20 years after the term of payment. The acceptor was dead. Action was sustained.

1759. Feb. 22. JAMES FRASER *against* COSMO CAMERON of Letterfinlay.

THE father of Cosmo Cameron accepted a bill for L. 6 Sterling, dated the 16th May 1737, and payable to Malcolm Frazer 10th March 1738. After the death of the acceptor, at the distance of more than twenty years from the date of the bill, but some months less than twenty years from the term of payment, an action was brought by James Frazer, to whom the bill was indorsed, against Cosmo Cameron, as representing the acceptor, for payment.

The LORD STRICHEN, Ordinary, 'sustained action on the bill, notwithstanding the taciturnity, and in respect the defender did not insist for a diligence to recover vouchers of payment; and decerned.'

In a petition for the defender, it was *argued*, That, besides the taciturnity in this case, a presumption arose, that the bill, though his father had not taken it up, had been paid, namely, from the facility and weakness of his father, who was regularly interdicted in the 1723, and was in use to pay the bills and debts he owed, by orders upon his tenants, without taking up the vouchers against him: That his father had died when the defender was a child; and that he knew not into whose hands his father's papers had come.—In point of law, it was *argued*, That though by the law of Scotland, no prescription, with respect to bills, was established by statute; yet, as the act 1681 refers, in the preamble, to the *custom of other parts*; and that by the *custom of England*, bills prescribe in *six years*; and of France in *five years*; and, in other countries, by a short prescription; it seemed agreeable to analogy, that they should also be limited in this country to a short endurance, otherwise the danger might be great; and that the Court had, in several instances, refused action upon bills which had lain over for a long time, particularly where the acceptor was dead before the action was brought. See No 189. p. 1631.

'THE LORDS refused the petition without answers; and adhered to the Lord Ordinary's interlocutor.'

For the Petitioner, *Montgomery*.

Fac. Col. No. 176. p. 314.

1760. July 15.

HUGH STEWART of Northwoodside, *against* The TRUSTEES of GEORGE HOUSTON of Johnston.

No 197.

Action refused on account of the circumstances of the case, on a bill which had lain over 27 years.

GEORGE HOUSTON of Johnston was, in summer 1755, charged for payment of a bill of L. 15, accepted by him, of date 5th March 1728, and payable to Hugh Stewart of Northwoodside against the 5th day of May thereafter.

Mr Houston suspended the charge; but having died before the suspension was discussed, the process was transferred against his apparent heir, and certain truf-