

## 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-

tees named by him in his last will to manage his estate for behoof of his heir and creditors. No 197.

*Pleaded* for the suspenders, That this bill was no legal document of debt, as it had lain over for 27 years, without diligence done upon it, and had not been homologated by payments of interest, or otherwise. Besides, from the circumstances of the case, there is the strongest presumption that this bill was paid and extinguished soon after it became due: For it appears, that Mr Houston was proprietor of a considerable lime-work in the neighbourhood of Mr Stewart's farm; that he was in use to furnish him in large quantities of lime; and that he sometimes borrowed small sums from his neighbour Mr Stewart, which were afterwards allowed in accounting for the lime; and, particularly, there is evidence, from a missive produced, that not long after the date of the bill in question, viz. in July 1729, Mr Houston burned some kilns of lime for Mr Stewart, which were to be delivered to him in payment of certain sums which he then owed him; probably, among others, the bill in question.

*Answered* for the charger, Bills are probative by act of Parliament; and as no prescription of them is established, shorter than the long prescription of 40 years, they must be held as legal documents of debt within that period. The presumption of payment from the long taciturnity can have no weight in this case. Mr Houston was very inexact in his payments; and Mr Stewart was unwilling to press a friend and neighbour for so trifling a sum. The charger does further aver, that he was in use to pay ready money for the lime furnished to him by Mr Houston; and the lime-books are not produced to show the contrary: Neither is there sufficient evidence, that the quantity alluded to in the missive was actually furnished.

'THE LORDS, in respect of the circumstances of the case, found, That no action lay upon the bill; and suspended the letters *simpliciter*.' See PRESCRIPTION.

A&C. *Wm. Stewart.*

Alt. *Ilay Campbell.*

*Fac. Col. No 232. p. 425.*

1760, November 18.

THOMAS PRINGLE of Symington, *against*; JOHN MURRAY, Tenant in Fairnyhirt.

WILLIAM MURRAY, the defender's father, possessed a farm belonging to Pringle of Symington, the pursuer's father.

On the 13th December 1732, William accepted a bill drawn upon him by, and holograph of, the pursuer, for ten guineas, payable against the 15th November 1733.

The pursuer's father died in 1738; after which William, the acceptor of the bill, possessed under the pursuer until his death in 1744.

No 198.

Action sustained on a bill after 19 years, the drawer being alive, and making oath, that the contents were still owing.