

No 182. M'Kenzie on that statute, where he tells, that the Parliament did expressly refuse to comprehend bills of exchange in that act.

*Replied* for the defender, That he did not plead that the bill cannot be the foundation of an action; but that it having lain over for so long without diligence done on it, Deuchar's acceptance of it must be with the burden of all the defences that were proponable against Douglas himself, if the same had continued in his person, and as he had been pursuer; and therefore, as compensation would have been a good defence against Douglas, so must it be against Deuchar.

THE LORDS found, That the bill not being protested against the acceptor, nor diligence done thereon for payment during the space of five years, Deuchar the indorsee is only to be considered as a common assignee.

A. Ro. Dundas, Arch. Hamilton.

Alt. Isla.

Clerk, Robertson.

Bruce, No 80. p. 96.

\* \* \* See Douglas against Erskine, No 2. p. 1397.

1719. February 6. FARQUHARSON against BROWN.

No 183.  
Compensation found competent against an onerous indorsee of a bill which had lain over three years.

AN inland bill having lain over three years, without protest or other diligence upon it, compensation upon the debt of the indorser was found competent, against the indorsee for an onerous cause, in respect it was not judged for the benefit of commerce, that bills not protested in three years, should be better than bonds; or that bills which can easily be forged should stand out as lasting securities. See No 182. p. 1623.

Fol. Dic. v. I. p. 102.

See The particulars *voce* COMPENSATION.

1728. February.

GRIERSON against EARL of SUTHERLAND and LORD SRATHNAVER.

No 184.

A BILL had lain over two years and eleven months; yet compensation was not sustained. See No 50. p. 1447. See No 183. *supra*,

Fol. Dic. v. I. p. 102.

See The particulars *voce* COMPENSATION.

1728. June. HEDDERWICK against STRACHAN.

No 185.

THE LORDS sustained action upon a bill of exchange, though it had lain over near 20 years; but the action was against the acceptor himself, acknowledging

his subscription, and offering no objection against the bill, except the long time it had lain over.

No 185.

*Fol. Dic. v. 1. p. 102.*

See The particulars, *voce* WRIT.

1729. *January.*

DAVID HODGE, Copper-smith in Edinburgh, *against* JOHN SPIERS, Merchant there.

SPIERS, upon 19th June 1713, drew a bill upon Daniel Carmichael for L. 6 Sterling, payable on 1st December following. Without having done any diligence on the bill, Spiers indorsed it after several years. A date of March 1719 was affixed to the indorsation; and it was said, that Spiers had intrusted it blank indorsed to one Paterfon, in order to receive payment; but that Paterfon, in defraud of the trust reposed in him, had transferred it to Hodge. Hodge, after discussing Carmichael the acceptor, brought an action for recourse against Spiers the drawer.

No 186.

An indorsation of a bill which had lain over several years, found to import no more than the warrandice of an assignation.

Spiers *pleaded* in defence, That the bill having lain over for so many years had no privilege; and that Hodge, the apparent indorsee, was in no better situation than Paterfon, to whom it had been intrusted, and who had improperly given it to him.

THE LORD ORDINARY pronounced this interlocutor, 'Sustains the defence, and finds the bill pursued on has lost the privilege of a bill of exchange; and that the indorsation imports only the warrandice of an assignation; and therefore recourse is not competent thereupon; and affoizies, and decerns.'

To this interlocutor the Court adhered, upon advising a petition and answers. See No 182. p. 1623.

Lord Ordinary, *Rayston.*

For Hodge, *Jas Colvill.*

For Spiers, *Pat. Grant.*

*Fol. Dic. v. 1. p. 102. Session Papers in Advocates' Library.*

1734. *July 5.* RELICT of GEORGE SWAN *against* PROVOST JOHN CAMPBELL.

No 187.

IN a process of recourse at the instance of an executor, who, after the bill had lain over 23 years in the defunct's custody, protested it for non-acceptance, the drawer considered he had nothing to say for want of due negotiation, because the drawee was solvent; but he *pleaded*, That the bill was null upon the act 1681, as wanting writer's name and witnesses. He allowed that bills are excepted out of this act by custom, for the benefit of commerce, and by analogy to the laws of trading nations; but then the exception ought not to be absolute; it ought to be no broader than the practice of other nations will support, from

A drawer was not, even after 23 years, found entitled to plead that his draft wanted the solemnities of a probative writ.