

DIVISION V.

Bills by the lapse of time lose their Privileges.

1711. July 17.

DAME ELIZABETH NICOLSON *against* WILLIAM MORISON of Prestoungrange.

IN the action of recourse at the instance of the Lady Nicolson against Prestoungrange, for two thousand five hundred merks, contained in a bill of exchange, drawn by him payable to her, and protested for not payment, mentioned the seventh of February last, No 130. p. 1552.: THE LORDS found, That whatever, in the case of foreign bills, may be held a sufficient instruction, that the drawer was certiorated of his bill's being duly protested; yet in this case of an inland bill, where the possessor did not pursue recourse till two or three years after it was protested, this certioration must be instructed otherways than by the possessor's oath.

Forbes, p. 526.

No 181.

Found, that when an inland bill had lain over 2 or 3 years, due negotiation could not be proven by the holder's oath.

1715. February 18.

MURRAY of Deuchar *against* JOHN GRIERSON, Son to Sir Robert Grieron of Lagg.

DOUGLAS and HUNTER drew a bill upon John Grieron, payable to Michael Coulter, in the year 1709; which Grieron accepted, but did not pay, nor was the bill protested for not payment: but Coulter, the possessor, indorses to Douglas the drawer, who re-indorses to Coulter; and Grieron being arrested in England in the name of Coulter, who having declined to prosecute Grieron, Douglas deletes the indorsement to Coulter, and of new indorses the bill to Murray of Deuchar; and he having pursued Grieron the acceptor, he defends, on this reason, that he had compensations, and several other defences competent to him, against Douglas; one of the original drawers and indorser, which he was ready instantly to instruct.

It was *alleged* for the pursuer: That no compensation, nor any other allegiance competent against Douglas, was receiveable against the pursuer, possessor of the bill, for an onerous cause; because bills pass from hand to hand, as a bag of money, for the benefit of commerce, and admit of no exception, but payment instructed by receipts on the back of the bill.

It was *answered*: The privileges of bills of exchange duly negotiated are great, to which the possessor of this bill has no claim, but is only to be considered as a common assignee to a bond or other right; because this bill is not duly nego-

No 182.

A bill being allowed to lie over without any diligence for payment, during five years, the Lords found, that the indorsee was only to be considered as a common assignee, liable to the exceptions competent against his cedent.

No 182.

tiated, in as far as, *1mo*, It was never protested for not payment; in which case recourse is competent against the drawer; but when the drawer takes an indorsement, without a protest for not payment, that is an evidence that the possessor has been but a trustee, or that there was some other transaction not agreeable to the nature of a bill of exchange.

2do, This bill was drawn and accepted in the year 1709, not prosecuted till about five years after it fell due, which no possessor of a bill for a just and onerous cause would allow; or otherwise the possessor of a bill might claim the same privileges till the course of the long prescription; which would afford more inconvenience than all the benefit to trade by the currency of bills of exchange; for, in the course of so many years, the circumstances of merchants change, their books and letters fall into many hands, and the cause and occasion of bills could not be cleared; and bills requiring neither writer's name nor witnesses, nor other formalities, might easily be forged.

3tio, In this case also, the matter was rendered litigious, by arresting Grierison in the name of Coulter, who disowned the process, and thereupon the re-indorsement to him was delete, and the bill again indorsed to the pursuer; and a merchant could not deal for a bill of exchange, in the way of merchandise and commerce, in any of these circumstances.

It was *duplied*: The case is neither law nor practice, to put a merchant, or any other person *in mala fide* to rely upon the faith of an indorsed bill; and if such circumstances as are objected were admitted, that would derogate much from the faith and currency of bills. And, *1mo*, Douglas might take an indorsement from the possessor to favour Grierison; because it is always a discredit to the acceptor of a bill to suffer a protest.

2do, Neither is there any time limited for doing diligence against the acceptor of a bill. The drawer may allege, that the possessor cannot recur without negotiating the bill with all diligence; but the acceptor of a bill can never object.

3tio, It is ordinary to delete indorsements upon many occasions, and to indorse of new.

It was *duplied*: It is not agreeable to the custom of merchants, that the drawer should pay or take an indorsement without a protest; neither would any merchant, or other dealing in the way of commerce, give credit to a bill that had lain over for many years; and so in some cases, indorsements are and may be lawfully delete; yet in that case also it gives ground of suspicion, where the cause cannot be cleared.

' THE LORDS had no great regard to the matter's having been rendered litigious, which might have been unknown to the indorsee; but they found, That the pursuer was only in the case of an assignee to a debt, and had not the privileges of a possessor of a bill of exchange, both in respect that the bill was indorsed to the drawer without a protest against the acceptor, and, *separatim*, in respect that the bill was suffered to lie over without any diligence for five

‘ years ; for they thought that no merchant would accept of such a bill in the way of commerce, to afford the extraordinary privileges of bills of exchange during the course of the long prescription.’

No 182.

THE LORDS had also some reasoning about the period that might be reasonably allowed for the currency of bills : in which they came to no resolution ; but were unanimous, ‘ That after so many years they should be reckoned no better than common assignations, admitting of compensation and other legal defences ; because the currency and privileges of bills were not established by any statute, except as to summary diligence and annualrent, but only by the decisions of the Lords, for the favour of commerce ; and that there was neither decision, nor any reason to favour bills that had so long lain over.’ And some were of opinion, that the proper period for these extraordinary privileges ought to be six months, allowed by law for summary diligence ; because there could not be so clear a foundation for settling any other period. Farquharson against Brown, No 183. p. 1626. it was found, That an inland bill having lain over three years, without protest, or other diligence upon it, compensation on the debt of the indorser was 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 so easily be forged, should stand out as lasting securities.

Eol. Dic. v. 1. p. 102. Dalrymple, No 138. p. 191.

* * * The same case is reported by Bruce :

JOHN GRIERSON having accepted a bill drawn by John Hunter and Robert Douglas, payable to Michael Coulter, merchant in Glasgow, and getting a bill for the equivalent from Douglas ; the said Douglas paid Coulter, and took up the bill from him, and an indorsation to himself, and thereafter reindorsed it to Coulter : But having deleted the re-indorsation, he indorsed again of new in favour of Deuchar, who, (after the bill had lain over more than five years,) raised a process thereon against Grierson the acceptor ; where

It was *alleged* for the defender, That, though bills of exchange, when recently granted, and passing in way of commerce for money advanced to the drawer or indorser at the time, are much privileged, and looked upon as ready money ; yet when they lie long over, or are given for satisfaction or security of prior debts, then any defence competent in other cases are competent in this, and the person to whom the bill is payable or indorsed, is only looked upon as a common assignee:

Answered for the pursuer, That the lying over of a bill for some time, does not prejudice it : On the contrary, bills of exchange, though holograph, do not fall under the statutory prescription of 20 years, as is observed by Sir George

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.

Act. 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