No 187. whence the exception is copied; and there is no trading nation in Europe where there is not a limitation upon the currency of bills; in ſome five years, in ſome ſix, in others ſeven; but none goes the length of twenty.

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

See The particulars, *voce* WRIT.

1747. *February* 11. GARDEN of TROUP *againſt* RIGG.

No 188.
Bills had lain over without demand for about 30 years. The acceptor was alive. Found that no action lay for them, unleſs ſupported by the acceptor's oath to the verity of his ſubſcription. This judgment was reverſed on appeal; but on account of the particular circumſtances of the caſe.

IN the year 1740, Alexander Garden of Troup, as aſſignee by the late Mr John Arrot, profeſſor of philoſophy in St Andrews, purſued Mr Thomas Rigg for payment of two bills accepted by Mr Rigg to Mr Arrot, one of the ſum of L. 96: 13: 4 Sterling, of the 11th May 1708, and another for L. 40 Sterling, of the 2d of May 1712; and after other defences to the form of the bills were repelled, the defender at laſt pleaded preſcription, as the bills had lain over ſo long a time as 28 years, which was the caſe of the lateſt, without proteſt or demand.

Anſwered for the purſuer, That without a ſtatute the Court cannot by judgment introduce a preſcription of bills: That it would be remembered, that a few years ago, for obviating the danger from bills being ſuffered to lie over, the Court had it under conſideration to make an act of ſederunt, declaring that they would, in time coming, refuſe to ſuſtain action upon bills of exchange, after a certain term of years; but ſtill it was not propoſed to have a retroſpect: And even the deſign was laid aſide, by reaſon of a doubt entertained concerning the powers of the Court, in what would look very like making a new law: That in a variety of former caſes, the Lords had refuſed to admit any ſhort preſcription of bills. Mr Forbes, obſerves, in his Treatiſe on Bills, That the Lords found, 4th February 1692, Leſly of Balquhain againſt Mrs Menzies, that bills of exchange do not preſcribe as holograph writs, (*See* WRIT.) In Hedderwick againſt Strachan, No 185. p 1626. action was ſuſtained on a bill though it had lain over for near 20 years; and Mrs Swan againſt John Campbell, No 187. p. 1627. action was ſuſtained on a bill that had lain over for 23 years; and a contrary judgment now would give juſt occaſion to apply what has been on another occaſion ſaid, that *misera eſt ſervitus ubi jus vagum aut incognitum.*

That Sir George M'Kenzie, in his obſervations upon the act 1669, which introduces the vicennial preſcription of holograph writs, ſays, That he remembered the Parliament expreſsly refuſed to limit bills of exchange to that time: That neither the French *ordonnance* in 1673, limiting bills of exchange to five years, nor the Engliſh ſtatute of limitations of James I. of England, limiting them and all actions on the caſe and obligations, without ſpeciality, to fix years, as they are the ſtatutes of foreign countries, have any force with us. And as in thoſe ſeveral countries a ſtatute was neceſſary to introduce the limitation, and which

in the different countries is various, not only do the ſtatutes in theſe countries afford no argument for the defender in the preſent caſe, but on the contrary they afford a ſtrong argument, why, in a country where there is no ſtatute of limitation, a court of judicature cannot ſupply it. No 188.

Nevertheleſs the Lords, upon the 6th January 1746, by a ſmall majority, on report, found, 'That no action lay upon the bills purſued for, which had lain over 'ſo long a time without demand, unleſs ſupported by Mr Rigg's oath upon the 'verity of his ſubſcription to the acceptance;' and, of this date, 'adhered.'

What the Lords put the judgment on, was not preſcription, but that the bills were not probative: That bills, though not holograph, are probative, becauſe of the expediency of commerce from the example of other nations; and becauſe, as Lord Stair expreſſes it, they are not ſuppoſed or intended to ly over. It were therefore abſurd, that they ſhould continue to be probative when they have lain long over, to the great danger of commerce; but, it is ſtill left undetermined, how long they will be found to continue probative, though in the reaſoning the term of 20 years was pointed at.

Nor did the minority differ from this general reaſoning, but rather declared themſelves of the ſame opinion, had the caſe been of a bill that had lain ſo long over without demand, the acceptor dead, and no circumſtance to ſupport the authenticity of the bill; but ſuch were the circumſtances of this caſe, as inclined them to be of opinion, that proceſs lay upon the bills in queſtion. The acceptor, who is ſtill alive, and the perſon defending this action, was ſo far from objecting to the authenticity of the bills, that the firſt defence he made ſuppoſed their authenticity, viz. That they were null, as bearing annualrent and penalty; and from which objection the Lords found he was barred *personali exceptione* as having been Mr Arrot's ordinary lawyer at the time, *vide* 26th November 1743, *voce* Personal Objection. When he was beat from this, he then pleaded preſcription, which ſtill ſuppoſed that the bills had once been good documents of debt; but never once poſitively alleged, that the bills had not been truly accepted by him. The moſt that he ever ſaid was, that they were ſuſpicious, being all written by the drawer himſelf, except the ſubſcription, which, for any thing he remembered, might be the drawer's alſo. A variety of circumſtances were likewiſe inſiſted on by the purſuer for ſupporting the authenticity of the bills, unneceſſary to be mentioned; and from the complexion of the whole caſe, the minority, as has been ſaid, were of opinion, that action lay upon the bills; and that as the defender had, as the proceedings are above ſtated, in effect rather admitted, than denied his ſubſcription, there was no neceſſity for laying the iſſue of the cauſe on the defender's oath, which the purſuer was not willing to ſubmit to.

Notwithſtanding this, the Lords adhered to the above interlocutor.

No 188.

N. B. This judgment was on appeal reverſed; and, as is informed, not on the general point, but on the circumſtances of the caſe; ſo that the general point may ſtill be thought entire, ſhould a queſtion hereafter occur upon it.

Kilkerran, (BILLS of EXCHANGE.) *No* 12. *p.* 76.

*** For the particulars of the Appeal *see* the caſe between the ſame parties, *voce* PERSONAL OBJECTION.

*** D. Falconer reports the ſame caſe:

MR THOMAS RIGG of Morton, advocate, granted bill, 11th May 1708, for L. 666: 13: 4 Scots; and another, 2d April 1712, for L. 40 Sterling, to Mr John Arrot, Profeſſor of Philoſophy in the Univerſity of St Andrews, who having diſponed his effects at his death to Mr Alexander Garden of Troup, advocate; the diſponee's ſon and heir raiſed a proceſs againſt Mr Rigg, in the year 1740, in which it was *objected*, That the bills were not probative after ſo long a time; and Mr Rigg, in a condeſcendence given in by him, affirmed, that he could not charge his memory he had ever ſeen them, till the year 1741, that they were given out in proceſs.

Pleaded for the defender, That bills of exchange were introduced amongſt us, in imitation of the practice of other trading nations, where they were ſubject to a ſhort preſcription; thus, in France, they preſcribed in five years by an ordinance made concerning them, *anno* 1673, and in England in ſix; and if they ſhould be found with us to give a perpetual ground of action, it would be deviating from the general practice, as it would alſo be a great prejudice in rendering ineffectual all the ſolemnities neceſſary to the execution of other writs, and contrived for the preventing frauds; which precaution might eaſily be eluded, by framing bills, and letting them ly over, till it ſhould be impoſſible to cavil them; that Stair, b. 4. tit. 42. § 6. ſaid, 'Bills that are kept up for any conſiderable time, are not probative.'

That the preſent bills laboured under ſeveral ſuſpicions, being all wrote with the drawer's hand, and having lain over ſo long undemanded, although the creditor was ſometimes in ſtraits, and the acceptor had always been in credit.

Pleaded for the purſuer, That bills were with us probative deeds, and as there was no ſtatute limiting them, they behoved of neceſſity to laſt the time of the long preſcription. They were not introduced by the act 1681, but received before that time by cuſtom; and as in France, before 1673, there was no preſcription of bills; ſo if we received them in imitation of it, and other foreign nations, all whoſe preſcriptions concerning them were founded on ſtatute, it followed that we adopted them as in uſe amongſt them; that the act 1681, in referring to the practice of nations, only copied the giving ſummar execution, but not the limitations by that time received in any of them; for ſuppoſing it to have done ſo, it would be a queſtion what was the limitation received; and ſo certain was it, that before they were ſubject to none, that Sir George Mackenzie expreſsly ſaid, it was propoſed in Parliament to ſubject

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them to the vicennial preſcription, and refuſed; that thus the deciſions had gone, 4th February 1692, Leſly of Balquhain againſt Mrs Menzies, *see* WRIT; June 1728, Cowan againſt Wingate, *see* WRIT; 5th July 1734, Relict of Swan againſt Campbell, No 187. p. 1627.; 25th July 1732, Rodgers againſt Cathcart and Ker, *see* WRIT.

The bills were no ways ſuſpicious, and the argument drawn from the forbearance was ſufficiently obviated by letters of Mr Rigg's, produced, wherein he aſked delays of a debt in general, which behoved to apply to this, as he did not produce the letters to which his were anſwers.

THE LORDS, 6th January 1747, found that no action lay on theſe bills which had lain over ſo long a time without demand, unleſs ſupported by Mr Rigg's oath upon the verity of the ſubſcription to the acceptance: And on bill and anſwers adhered.

Reporter, *Elchies.* Act. *W. Grant.* Alt. *J. Grant.* Clerk, *Gibson.*

Fol. Dic. v. 3. *p.* 91. *D. Falconer, v.* 1. *No* 165. *p.* 216.

No 189.
Found that no action lay upon a bill which had lain over for about 25 years. Both drawer and acceptor were dead.

1749. *January* 31. WALLACE and CRAWFURD *againſt* LEES and CRAWFURD.

IT has been obſerved *ſupra* 11th February 1747, Garden of Troup againſt Rigg, that although the Houſe of Peers had reverſed the decree of the Court of Seſſion, by which it had been found that no action lay upon the bill purſued for, in reſpect it had lain over for 28 years, yet that judgment had proceeded upon the circumſtances of the caſe, and not upon the general point; which, therefore, was ſtill entire ſhould the caſe again occur.

Accordingly, it did now occur in the caſe of a bill for 500 merks, which had not been heard of ſince its date in 1722, after drawer and acceptor were both dead, when the LORDS, upon report, unanimouſly found, 'That no action now lay upon it.'

Kilkerran, (BILLS of EXCHANGE.) *No* 20. *p.* 85.

*** D. Falconer reports the ſame caſe:

CHARLES CRAWFORD, merchant in Glaſgow, granted two bills for 500 and 300 merks, dated 16th April 1722, and 1ſt December 1724, with annualrent and penalty, to Janet Crawfurd his ſiſter; who aſſigned them to Anne Crawfurd; and ſhe in 1747, with concourſe of James Wallace of Wallacetoun, her huſband, purſued the acceptor's repreſentatives.

Pleaded in defence, The bills are null, as containing a penalty.

Anſwered, The nullity cannot be objected to theſe bills, ſeeing they were granted to an ignorant woman by her brother, a man verſant in buſineſs, by whoſe hand they appear to be written; agreeably to the deciſion 26th November 1743, Garden of Troup againſt Mr Thomas Rigg, C. Home, p. 405. *voce* PER-