

No 200.

1762. February 10. SMITH *against* DOUGLAS.

A BILL had lain over for five years without diligence. It was found to have lost its privileges so as not to exclude compensation against an onerous indorser.

*Fol. Dic. v. 3. p. 91.*

*See* The particulars *voce* COMPENSATION

1766. June 13.

JAMES WEEMYSS, Goldsmith in Edinburgh, *against* JOHN M'NAUGHTON, Esq;  
Inspector General of the Customs.

No 201.

Action refused on a bill which had lain over twenty-five years, the acceptor alive; but under reservation to insist for the acceptor's oath.

In July 1739, Mr M'Naughton accepted a bill to Thomas Erskine for L. 25 Sterling, payable two months after date. This bill Mr Erskine indorsed to James Moncrief, who indorsed it to Mr Weemyss; who, in 1765, brought an action against M'Naughton for payment of the bill.

The question came before Lord Pitfour, who made avisandum to the Court and appointed informations.

*Pleaded* for Weemyss the pursuer: By the common law of the country, there is no such thing as prescription known. Every right, legally constituted, subsists for ever; but as, in process of time, this unlimited endurance of rights or obligations was found to be attended with many inconveniencies, the exception of prescription was introduced by the act 1469, whereby an action not exercised, for the space of 40 years, was elided; and afterwards the legislature thought it expedient, by special statutes, to introduce sundry shorter prescriptions, as the triennial prescription of accounts, the vicennial prescription of holograph writs, &c.

But there was no statute limiting the prescription of bills, which must therefore subsist for 40 years. In some cases, it is true, the Court has refused action on bills that have lain over for a shorter time; but such decisions proceeded always upon the presumption of payment, and not upon the footing of prescription. And the pursuer *alleged*, that there was no room for presuming payment in this case, as the acceptor himself was alive, and did not condescend upon any particular time or place when payment was made.

*Answered* for M'Naughton the defender: That, though no particular law has, in this country, limited the prescription of bills to a short endurance, yet the Court has been constantly in use of denying action upon them after a long taciturnity; which appears agreeable to Lord Stair's opinion, titled *Probation by writ*; and Lord Bankton, treating of Bills of Exchange; and sundry decisions were referred to, where the Court had refused action upon bills, that had lain over for a number of years, though not near the years of the long prescription;