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 neigbourhood 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 harger 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.

Act. *Wa. Stewart.* Alt. *Ilay Campbell.*

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

1760, *November* 18.

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

No 198.
Action ſuſtained on a bill after 19 years, the drawer being alive, and making oath, that the contents were ſtill owing.

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. The defender ſucceeded to his farm and effects; and ſoon after there was a clearance between the purſuer and him, with reſpect to his father's poſſeſſion, and a diſcharge granted for all bygone rents. He continued to pay his rent as it fell due; but neither at the time of clearance, nor for ten years afterwards, was there any mention made of the above bill.

In 1753, Mr Pringle purſued Murray for payment of this bill; and obtained decree in abſence for the contents of it, after deducting L. 5 marked paid thereon.

In a ſuſpenſion of this decree, it was *pleaded* for Murray, 1*mo*, That all action on this bill was loſt by the purſuer's taciturnity, it having lain over from the year 1732 to 1753: That this doctrine, founded upon the very nature of bills, was eſtabliſhed by all our lawyers; Stair, b. 4. tit. 42. § 6.; Bankton, b. 1. tit. 13. § 31.; and their opinions confirmed by a variety of deciſions; Wallace againſt Lees, No 189. p. 1631.; Moncrieff againſt Moncrieff, No 7. p. 478. and No 31. p. 1428.; Lookup againſt Crombie, No 193. p. 1635.; and ſeveral others.

2*do*, That the frequent tranſactions between the parties during all that time, without any mention of the bill, confirmed the ſuſpicion againſt this debt, and the legal preſumption of payment or extinction.

3*tio*, That theſe objections were not removed by the receipt of a partial payment wrote on the back of the bill. For if ſuch a jotting on the back of a bill, was to hinder it from being cut off by the taciturnity of the drawer, a pretended creditor, who had either forged a deed, or poſſeſſed himſelf of a ground of debt already paid, might preſerve it in force, after all opportunity of detection was loſt, by writing on it receipts of partial payments.

4*to*, Neither could the bill be ſupported by the drawer's oath in ſupplement. It would even be an extraordinary indulgence, to refer it to the oath of the acceptor's repreſentative. Sir George Mackenzie obſerves, on the act 1669, 'That holograph writs and ſubſcriptions, without witneſſes, not purſued within 'twenty years, are only to be proven by the oath of the ſubſcribers; ſo that if 'the ſubſcriber dies, theſe writs die with him.' Therefore, as in the caſe of a holograph bond, the debt cannot be proved, after twenty years, by the oath of knowledge of the granter's repreſentative; far leſs ought ſuch oath to be put to the repreſentative of the granter of an old bill; as bonds are intended for permanent ſecurities; which, it is certain, bills are not.

Answered for the charger, 1*mo*, With regard to taciturnity, in this caſe the bill did not lie over for twenty years, which is the ſhorteſt time that has ever been found to cut down a bill on that head. The bill was payable 15th December 1733, and the ſummons for payment of it was executed on 26th April 1753, which is little more than nineteen years. The preſent caſe, therefore, does not at all quadrate with the deciſions referred to by the purſuer; for in all of them the taciturnity continued above twenty years.

2*do*, The tranſactions between the parties can never be conſtrued into an extinction of the debt. The money was lent out of favour to the defender; and the ſame cauſe occaſioned the delay of ſeeking payment.

No 198.

3*tio*, It is not neceſſary to plead the partial payment marked on the back of the bill as an interruption; for though no receipt had been there, the bill itſelf was not preſcribed. Nor does the opinion of Sir George Mackenzie on the act 1669 apply to the preſent caſe: For, 1*mo*, There is no law by which bills preſcribe, like holograph writings, in twenty years. 2*do*, This bill was made a ground of action within that time.

'THE LORDS ſuſtained action on the bill, the purſuer making oath, That the contents of the ſaid bill, drawn by himſelf, were ſtill reſting owing, ſo far as by him claimed in this proceſs.'

Act. *G. Pringle.* Alt. *Rae.*

Fac. Col. No 246. *p.* 448.

1762. *February* 24. GEORGE SCOUGAL *againſt* ANDREW KER.

No 199.
A bill was indorſed away 20 months after the term of payment, during which time no diligence had been done upon it. It was found to have loſt its privileges, ſo as to render compenſation againſt an onerous indorſee competent. *See* No 12. p. 1407.

ANDREW KER purchaſed ſome cattle from Charles Ker, in May 1755, for the price of which he accepted a bill to Charles, payable at the term of Martinmas thereafter.

In July 1757, about 20 months after the term of payment, Charles Ker indorſed the bill for value to George Scougal, who brought his action againſt Andrew Ker the acceptor, for payment; *and having obtained decreet* in abſence, the ſame was ſuſpended by Andrew Ker.

Pleaded for the ſuſpender: The bill having been allowed to lie over for 20 months after the term of payment, without being indorſed, or any diligence done upon it, has loſt the privilege peculiar to bills, and is now ſubject to every exception competent againſt the original creditor: The ſuſpender is therefore at liberty to plead compenſation upon a debt which Charles Ker the indorſer owes to him, equal to the contents of the bill.

By the cuſtom of merchants in all the nations of Europe, bills, *before the term of payment*, paſs current by indorſation as bags of money, without being ſubject to compenſation, arreſtment, ſeparate diſcharge, or other defence, ariſing from the debt or deed of the original creditor, or intermediate indorſees, in prejudice of the laſt onerous indorſee: But, after the term of payment is elapſed, and the money is not paid in terms of the acceptance, the debtor in the bill is conſidered as in a ſtate of bankruptcy, and no merchant will give value for ſuch bill: It may be taken in ſecurity of debt, in the ſame way as an aſſignation to a decreet, or any other ground of debt, but will not be taken as a bag of money. The indorſee, in this caſe, truſts ſolely to the faith of the indorſer, nor is he tied down to any of the rules of negotiation; if the bill is not paid, he returns it upon the indorſers, and gives himſelf no further trouble; he is, in effect, a truſtee for the indorſers; and therefore, he cannot complain, if every legal objection, competent againſt the indorſers, is pleaded againſt him. Nor does it make any difference, whether the non-payment has been owing to