

(DUE *ex lege*)

No 5. Accordingly, THE LORDS " found annualrent due from the date of the bill." For, being accepted without a new date, it was presumed to have been accepted of the date of the bill.

Kirkerran, (BILLS OF EXCHANGE) No 18. p. 83.

1749. November 24. JOHN FORREST against The Earl of SUTHERLAND.

No 6.
No interest found due on a bill accepted by a wife for necessaries.

ELIZABETH SHAW, milliner in Edinburgh, drew upon the Countess of Sutherland, 31st August 1742, for L. 49 Sterling, against Candlemas then next, being the balance of an account of goods furnished to her, including interest from the draught, which she accepted.

Application was made to the Countess for payment, and a process threatened; but, upon promises to pay at Whitsunday 1744, not raised till after the term; when it was insisted in by John Forrest, merchant in Edinburgh, indorsee to the bill. And the Lord Ordinary decreed with interest.

Pleaded in a reclaiming bill, A wife may take off necessaries, but cannot grant securities bearing interest; which, in this case, is not due *ex mora*, as the contraction was not made known to the Earl.

Answered: As a wife may bind her husband by contracting for what falls under her *præpositura*, so she may grant security for what she purchases, bearing interest from the ordinary time, to which credit is given; and the indorser did what was incumbent on her by demanding from the Countess, who, she doubted not, would inform her husband.

" THE LORDS found interest not due." (See HUSBAND and WIFE.)

Ad. H. Home.

Alt.

Clerk, Kirkpatrick

Fol. Dic. v. 3. p. 28. D. Falconer, v. 2. No 100. p. 115.

1751. December 13.

MONCRIEFF of Tippermalloch against Sir WILLIAM MONCRIEFF.

No 7.
A bill payable on demand, found to bear interest only from citation in the process.

SIR Thomas Moncrieff of that ilk, at Moncrieff 16th October 1719, granted bill to Sir Hugh Moncrieff of Tippermalloch, for 700 merks Scots on demand; and 11th January 1720, by missive, apologised for failure of payment, obliging himself to give annualrent until it were paid.

Sir Hugh Moncrieff at Edinburgh, 22d February 1732, accepted a draught of Mr David Moncrieff, son to Sir Thomas, for L. 16 : 16s. Sterling, payable to Sir Thomas on demand.

A promissory note payable on demand, found to bear interest from citation *ex bono et æquo*.

Sir Thomas, at Moncrieff, 21st June 1732, granted bill to Sir Hugh for L. 40 Sterling against Martinmas, with interest; and 20th April 1734, granted a promissory note for L. 30 Sterling on demand.

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No. 7.

Sir Thomas having, by missive, 29th December 1735, desired from Mr John Moncrieff the loan of L. 50, or 1000 merks upon bond, granted bill to him 5th January 1736, for 1000 merks Scots on demand.

Mr John Moncrieff becoming heir to Sir Hugh, who died in 1744, and having right to these several debts by special disposition, raised action therefor in 1746, against Sir William the grand-son and heir of Sir Thomas Moncrieff.

The Lord Ordinary, 19th June 1750, "found the bill for 700 merks not probative after such a lapse of time, without any demand upon it; and therefore, that no action was competent upon the same: That the bill for L. 40, though containing an obligation for payment of annualrent, was not null and void: That the L. 30 note, with interest from the citation, was due to the pursuer: That the bill for sixteen guineas, accepted by Sir Hugh, payable to Sir Thomas, was due to the defender, and that he was entitled to an allowance of the same out of the foresaid bill of L. 40: And that the bill for 1000 merks, drawn by the pursuer, and accepted by Sir Thomas Moncrieff, was due with annualrent from the citation."

That part of the interlocutor, sustaining the L. 40 bill, containing a stipulation of interest, was represented against by the defender, and the bill finally found null, as observed 30th July 1751. (*See BILL OF EXCHANGE.*)

Pleaded in a bill for the pursuer, with regard to the bill for 700 merks, bills are probative writs by the law of nations, and have received the sanction of the law of Scotland, and no statute has limited their endurance to a shorter period than 40 years; were they probative only by the law of nations, they might cease to be so by the same law; but, being probative by statute they cannot cease but by prescription, which obtains not without statute: Long taciturnity may make any deed liable to suspicion, and with other circumstances, may amount to a presumption of payment; but there are, in this case, no circumstances tending to establish any such presumption. The bill was plainly for a loan of money, and from the date of Sir Thomas's letter, became a loan upon annualrent; after which, no presumption could arise from its lying over. The interest was very nearly paid up in 1732; Sir Hugh then made his demand, whereupon Sir Thomas directed his son David, at Edinburgh, to make payment. If he had taken a receipt, there could have been no doubt; but he, perhaps not knowing of the debt, having taken a bill, payable to Sir Thomas on demand, this cannot, however, be considered as any other than a receipt of money from Sir Thomas, especially, as within three months thereafter, Sir Thomas was borrowing from Sir Hugh in the country, L. 40 Sterling on interest; for, had the sixteen guineas been intended as a loan, they fell then to have been discounted, and the bill delivered up; whereas otherwise, it was properly kept as a voucher of payment of the interest on the 700 merks bill, or of compensation to meet it: The loan of the L. 40, and the further loan of L. 30 in April 1732, shew that the correspondence between the parties was continued on the same footing. Sir Hugh

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No 7. lending, and Sir Thomas borrowing, and Sir Thomas dying in 1738, there is no presumption any of the debts were paid in his life, and after that time, it cannot be pretended; since Mr David, who defends this action, has since then had the management of Sir Thomas's affairs, and if he had paid, would have been possessed of a voucher. The defender insists, as on a presumption of payment, that Sir Hugh was uneasy in his affairs, having, from 1719 to 1732, been under process in Exchequer, as cautioner for the factor on the forfeited estates of Fingask and Innernytie, and having only got his *quietus* at the end of that time. But, the fact was, this brought Sir Hugh under no uneasiness; he was cautioner, but had security from the factor's brother; the factory was of short continuance, and from the circumstances of these estates, the crown had no interest in the rents, but the creditors; the factor proved to be due no balance, but dying without accounting, Sir Hugh was summoned into the Exchequer, where he got his *quietus* without any payment, and he was always easy in his circumstances, though possessed of no large estate. The petitioner also craved interest on the L. 30, due by promissory note, from the citation in this process, as no objection could be made to the debt which had long lain over; and, it appeared to be customary between the parties, to give interest on such borrowings; and, for the 1000 merks lent by Mr Moncrieff upon bill from the date, Sir Thomas having offered his bond, and though the parties had not been at leisure to execute a bond at the time, and it had been after neglected, it was both their intention that the money should bear interest.

Answered: It was not the intent of the statute giving validity to bills, to make them of equal endurance with bonds, when in all other countries, they are subject to a short limitation. And the Lords have often found, that after a course of years, there lies no action upon them. The missive founded on for supporting this bill, is itself prescribed, and affords a presumption contrary to the purpose for which it is used, viz. that Sir Thomas would not let his bill ly over, as he was so scrupulous in giving an obligation for interest, because it was not precisely paid. It cannot be imagined, Sir Hugh could afford to want his money, when he was ten years under prosecution before the Court of Exchequer, during which time it is affirmed, Sir Thomas made him frequent advances; and, the defender is persuaded, the subsequent bill and note were granted as interim securities, till a final accounting. The sixteen guineas paid by Mr Moncrieff by his father's order, makes no presumption that 700 merks were due, as they do not tally with the interest thereof, and in fact, were advanced to Sir Hugh to enable him to pay the dues of his *quietus*, and could not be deducted from the L. 40 bill, as the bill was then in Mr Moncrieff's hand in Edinburgh. There was no demand made during the lives of Sir Hugh and Sir Thomas Moncrieffs. There is no ground in law for giving interest on the note for L. 30, on which, if a clear account could be given of the transactions betwixt these two gentlemen, the de-

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fender believes nothing would be found due. And, with regard to the bill granted to this pursuer, interest can only be due from the citation, as though the parties designed a bond, that intention was departed from, and the money lent upon bill.

No 7.

THE LORDS found, That no action lay upon the bill for 700 merks; and found that annualrent was due on the promissory note for L. 20 Sterling from the time of the citation in this action; and adhered to the Lord Ordinary's interlocutor, finding annualrent due upon the bill for 1000 merks Scots, granted to Mr John Moncrieff only from the citation.

A. R. Craigie.

Alt. Moncrieff.

Clerk, Gibson.

Fol. Dic. v. 3. p. 28. D. Falconer, v. 2. No 248. p. 303.

* * * Of the date 7th January 1752, Lord Kilkerran notices the above decision in the following terms:

MONCRIEFF *against* Sir WILLIAM MONCRIEFF and his Tutors.

THE LORDS found, "That action did not lye against the said Sir William upon a bill accepted by Sir Thomas Moncrieff, his grand-father, to Sir Hugh Moncrieff of Tippermalloch, on the 16th October 1719, after such a lapse of time, without any demand made upon it."

Action does not lye upon bills that have lain long over.

N. B. The Ordinary had expressed his interlocutor thus: "That the bill was not probative after such a lapse of time, and that action did not lye upon it." But when the Lords adhered, they dropped these words, not probative, and only found that action did not lye, &c.

At the same time, and between the said parties, the LORDS found that a bill payable on demand, bore interest only from the citation in the process; and, that even a promissory note, payable on demand, bore also interest from the citation *ex bono et equo*; though in this last, the Lords were far from unanimous. (See BILL OF EXCHANGE)

Kilkerran, (BILLS OF EXCHANGE) No 29. p. 91.