his ſubſcription, and offering no objection againſt the bill, except the long time it had lain over. No 185.

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

See The particulars, *voce* WRIT.

1729. *January.*

DAVID HODGE, Copper-ſmith in Edinburgh, *againſt* JOHN SPIERS, Merchant there.

No 186.
An indorſation of a bill which had lain over ſeveral years, found to import no more than the warrandice of an aſſignation.

SPIERS, upon 19th June 1713, drew a bill upon Daniel Carmichael for L. 6 Sterling, payable on 1ſt December following. Without having done any diligence on the bill, Spiers indorſed it after ſeveral years. A date of March 1719 was affixed to the indorſation; and it was ſaid, that Spiers had intruſted it blank indorſed to one Paterſon, in order to receive payment; but that Paterſon, in defraud of the truſt repoſed in him, had transferred it to Hodge. Hodge, after diſcuſſing Carmichael the acceptor, brought an action for recourſe againſt Spiers the drawer.

Spiers *pleaded* in defence, That the bill having lain over for ſo many years had no privilege; and that Hodge, the apparent indorſee, was in no better ſituation than Paterſon, to whom it had been intruſted, and who had improperly given it to him.

THE LORD ORDINARY pronounced this interlocutor, 'Suſtains the defence, and finds the bill purſued on has loſt the privilege of a bill of exchange; and that the indorſation imports only the warrandice of an aſſignation; and therefore recourſe is not competent thereupon; and aſſoilzies, and decerns.'

To this interlocutor the Court adhered, upon adviſing a petition and anſwers. *See* No 182. p. 1623.

Lord Ordinary, *Royſton.* For Hodge, *Jas Colvill.* For Spiers, *Pat. Grant.*

Fol. Dic. v. 1. p 102. Seſſion Papers in Advocates' Library.

1734. *July* 5. RELICT of GEORGE SWAN *againſt* PROVOST JOHN CAMPBELL.

No 187.
A drawer was not, even after 23 years, found entitled to plead that his draft wanted the ſolemnities of a probative writ.

IN a proceſs of recourſe at the inſtance of an executor, who, after the bill had lain over 23 years in the defunct's cuſtody, proteſted it for non-acceptance, the drawer conſidered he had nothing to ſay for want of due negotiation, becauſe the drawee was ſolvent; but he *pleaded*, That the bill was null upon the act 1681, as wanting writer's name and witneſſes. He allowed that bills are excepted out of this act by cuſtom, for the benefit of commerce, and by analogy to the laws of trading nations; but then the exception ought not to be abſolute; it ought to be no broader than the practice of other nations will ſupport, from

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