

instrument consequently, by the terms of the Act of Assembly, could not be pleaded or given in evidence. The evidence of George Denton, filed on the 20th of June last, assuming it to have been regularly taken (which I do not decide), does not in my opinion exempt this claim from the operation of the statute. He proves he heard the deceased say he owed his sister a sum of money. But the decisions of the Courts are conclusive to show that evidence of this kind is not sufficient. Nay that even an express promise to pay the debt will not revive the remedy upon the bond, barred by the statute, though upon such promise suit may be maintained, and the bond, though over twelve years standing, may be offered in evidence as the inducement of the promise. *Veasey vs. Bassett*, 7 H. & J., 461; *Lamar vs. Manro*, 10 G. & J., 50. This claim, therefore, is barred as against the party relying upon the statute.

The Auditor reports claim No. 5 as not barred, and as fully proved, but in this, I think, as the proof now stands, and in opposition to the exceptions to its admissibility, he is in error. Though the certificate of Thomas Mitchell, and the deposition of Sollers, together with the deposition of Anne R. G. Mackall, may have been sufficient before their admissibility was excepted to, they are not now, in my opinion, being excepted to, such proof as the law required. The certificate of Mitchell, and the deposition of Sollers are *ex parte*, and the former is not under oath. When a claim is preferred, founded on a lost instrument, evidence of the loss must be first offered. When that is done, a copy or parol evidence of the contents of the paper may be used, but you must first prove the existence of the original, for you cannot offer in evidence a copy, without previously showing that the instrument of which it purports to be a copy, existed as a genuine instrument. 1 *Stark. on Ev.*, 340, 341. Now it may be, and I am not prepared to say otherwise, that the proof exhibited (though full proof was demanded) would have been sufficient to establish the claim, if exceptions had not been filed to it. But these exceptions were not filed until the 20th inst., and the creditor, relying