1784. *November* 24. SIR JAMES GRANT *against* MRS MARTHA GROVE.

PRESCRIPTION.

Prescription of a debt due by a Corporation, whether interrupted by a horning used against some of the members who had been the representatives of the Corporation, when the decree on which the horning proceeded was pronounced?

[*Dictionary*, 11,283.]

BRAXFIELD. There is no good objection to the decreet 1736. The case comes to the horning. In order to interrupt the negative prescription, there must be a proper judicial demand against the person in the right: the charge is *nominatim* against persons who were not the legal representatives of the company.

HAILES. The case will not be the better that the chief amongst them died before the horning was executed against him.

KENNET. The horning is not regular, yet still it is a document taken on the debt.

SWINTON. Two of the assistants were in office when the horning was executed against them, as representing the company, and for themselves: this will interrupt, as it shows the *animus* of insisting.

MONBODDO. I know of no form by which any persons but those mentioned in the decreet could be charged.

ROCKVILLE. The decreet 1736 was good, and no person could be blamed for charging in terms of the decreet.

HENDERLAND. There were two remedies:—1*st*, A bill of horning, reciting the state of the case; 2*d*, A charge of horning against the company by its incorporated name.

ESKGROVE. Negative prescription is not a favourable plea. The Court always exempts a creditor from the negative prescription, if any rational grounds for his silence can be produced. Negative prescription does not imply that payment has been made, but it is a legal presumption of dereliction and discharge. A document must be taken,—so that the intention of the creditor be sufficiently evident. This case is not so strong, in the view of negative prescription, as that of a putative creditor. Horning could only be expede in terms of the decreet. Had all the assistants been dead, the horning would have been null; but that was not the case here: two of the assistants remained assistants; they represented the company, and they were liable, personally, to a certain extent.

[He concluded with quoting the case of Alcorn.]

BRAXFIELD. I have heard a great deal of law to which I cannot agree. The *animus* of the creditor is not sufficient: when I put my bond in the register, I show my *animus* not to relinquish my debt, yet *that* will not interrupt the negative prescription, although it be, in some sense, a decreet. Letters of horning also show an *animus*; but, if not executed, they do not interrupt; neither will a suspension interrupt, for *that* is the act of the debtor. If document be

not taken properly, the debtor is free. As to the case of Alcorn; when there are different *correi debendi*, document taken against one is enough, both by the civil law and our law. The assistants charged were not liable for the debt: it was a company debt,—the corporation ought to have been called, and not any individual. The calling a few is doing nothing.

MONBODDO. In the case of Alcorn, there was no *correus debendi*, but a cautioner: a decreet of registration is no document.

On the 24th November 1784, "The Lords found that the decreet of constitution, at the instance of the late Sir James Grant, with the horning and execution thereon, sufficiently interrupt the negative prescription, and therefore repelled the objection of prescription made to the interest produced and claimed on by the present Sir James Grant;" adhering to interlocutor of 21st July 1784.

Act. Ilay Campbell. *Alt.* Al. Abercrombie.

Reporter, Monboddo.

Diss. Braxfield, Hailes, Ankerville, Henderland, President.

[Justice-Clerk did not vote, having declined himself.]

1784. *July* 23. WILLIAM LENNOX and OTHERS *against* ROBERT GRANT and OTHERS.

SERVICE AND CONFIRMATION.

Confirmation as executor of a general disponee, who had not been confirmed nor in possession, not sufficient to give right of action respecting the subjects disponed.

[*Fac. Coll. IX.* 283; *Dict.* 14,381.]

MONBODDO. Mr Grant's right is defective: he has made up a title to Mrs Marshall, but *she* had made up no title to the bond. He has now made up a title to the disponee; but *that* comes too late after a competition.

ESKGROVE. Mrs Marshall had no possession of the debt, though she had of the interests received. The confirmation was an *ex post facto* business.

BRAXFIELD. Mr Grant, instead of confirming to Mrs Marshall, ought to have confirmed as executor-creditor on the disposition. Mr Grant has since obtained a confirmation, irregular indeed, but still vesting. There is no one that can challenge it, for he has besides a general disposition.

ESKGROVE. The difficulty here is, that the confirmation was not expede to the subject as *in bonis* of the husband to whom it belonged, but as *in bonis* of the wife to whom it did not belong.