

No. 327: cited section 38, that it was then precluded by the statutory limitation, notwithstanding the term of payment did not arrive till afterwards.

*Answered*; It follows immediately from the general nature of prescription, that its course cannot begin against a creditor till after the term of payment, because then only the obligation becomes exigible. It is likewise an undoubted rule, that every statute ought to be interpreted in consistency with itself, *totale lege perspecta*. Now, as the object of the statute in question, which is apparent from section 37, was to limit the endurance of the obligation created by bills to six years, but to no shorter a period; and as it is plain, that this limitation cannot take place before the debt becomes due, so section 38 is to be interpreted agreeably to section 37, and in such a manner as to permit six years to elapse after the term of payment of bills granted before May 1772, as well as of those posterior to that period.

*Observed* on the Bench; The present case, that of a bill granted before the period mentioned in the act, but not payable till afterwards, has not been provided for by the statute.

THE LORDS repelled the defence founded on the statute above mentioned.

Lord Ordinary, *Braxfield*.  
S.

Act. *Maclaurin*.

Act. *Ilay Campbell*.

Clerk, *Menzies*.

*Fol. Dic. v. 4. p. 103. Fac. Col. No 42. p. 69.*

1784. February 3. WILLIAM SCOTT *against* ANDREW GRAY.

No 328.

A partial payment made, and marked on the back of a bill, after the running of the sexennial prescription, by the representative of the debtor, found to save from the prescription.

ANDREW GRAY granted a bill to Scott. After this bill had undergone the sexennial prescription of act 12th Geo. III. John Gray, the heir of Andrew, who had died in the interim, made a partial payment of its contents, expressing his having done so by a marking on the back of it in his own hand-writing. Scott having sued John in an action for the balance, it was

*Pleaded* for the defender; Had the marking in question been affixed after the lapse of the statutory period by the debtor himself, then perhaps it might have operated as a written acknowledgment of subsisting debt; but ought not to have that effect, when done by his representative, misled, through ignorance, by the appearance of an unretired bill.

*Answered*; The ignorance alleged by the defender is contrary to the presumption arising from the circumstances of the case above mentioned, and no proof of it has been given.

The cause was reported to the Court by the Lord Ordinary.

THE LORDS "found the partial payment of the debt in question subsequent to the running of the sexennial prescription, and other circumstances of this case, sufficient to bar the said prescription."

THE COURT adhered to this judgment, after advising a reclaiming petition and answers. No 328.

Lord Ordinary, Stonefield. Act. Wight, Currie. Alt. Henry Erskine. Clerk, Campbell.  
S. Fol. Dic. v. 4. p. 103. Fac. Col. No 139. p. 218.

1784. November 23.

GORDON against BOGLE.

No 329.

GORDON sued Bogle before the Admiral Court for payment of a bill which a relation of his had accepted, to whom the defender had succeeded as heir. The Admiral precept, according to its usual form, made no mention of any particular debt; and before the action had been called in Court, when the libel was first filled up with a specification of the bill, the sexennial prescription had run. It appeared, however, that before the lapse of that time, a decree had been obtained against another person, who was co-obligant in the bill. THE LORDS found, that the execution on a blank Admiral precept does not interrupt prescription; but found, that the decree taken against one of the *correi* before the six years were elapsed interrupted the prescription as to all of them.

Fol. Dic. v. 4. p. 104. Fac. Col.

\* \* \* This case is No 247. p. 7532., *voce* JURISDICTION.

1784. November 26.

DOUGLAS, HERON and COMPANY against ROBERT RICHARDSON.

DOUGLAS, HERON and COMPANY, in 1781, raised an action for payment of certain bills which had become payable more than six years before its commencement. These bills were all of them protested, and most of the protests were registered. Within the statutory period, too, they had been all produced in a process of ranking and sale of the debtor's estate; and on some of them, in which there were other obligants besides the party now sued, diligence had been done against those persons. The defence of the sexennial prescription having been urged, it was

*Pleaded* for the pursuers; The prescription has been interrupted in three different ways; *First*, By the protest and registration, which import a legal demand of payment, a document taken on that demand, and a preparation made for the execution of diligence; *Secondly*, By the production of the bills in the process of ranking and sale, in the same manner as if that common action had been a particular one, instituted for the behoof of the pursuers alone; *And, lastly*, It has been interrupted by timely diligence done on these bills, though

No 330.

The production of bills with registered protests, in a process of ranking and sale, found to be sufficient interruption of the sexennial prescription.