

No 330.

against other obligants, agreeably even to the terms of the statute of 1772, which mentions in general the raising of diligence, or the commencement of action. This mode of interruption is established in regard to the long prescription; Bankton, b. 2. tit. 12. § 64.; Erskine, b. 3. tit. 7. § 46.; Sections 15. and 16, *h. t.*: And it does not appear to be less applicable to the shorter ones.

*Answered*; A protest and registration are not equivalent even to the raising of diligence, much less its execution; both of which the statute requires to produce interruption. As little effect had the exhibition of the bills in the above mentioned process, agreeably to what was determined in the last resort, in the similar case of *Hay contra King's Advocate*, 27th July 1757, *infra, h. t.* Nor could diligence done against other obligants create the interruption in question.

THE LORD ORDINARY "repelled the defence of prescription." And,

On advising a petition, reclaiming against that judgment, with the answers, the COURT, considering the protests, though registered, as insufficient to interrupt prescription, and it being unnecessary to notice the few bills on which diligence had been done, "found that the grounds of the debts in question having been produced in the process of ranking, was a sufficient interruption of the prescription."

Lord Ordinary, *Elliock.* Act. *Blair.* Alt. *Dalzell.* Clerk, *Orme.*

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*Fol. Dic. v. 4. p. 104. Fac. Col. No 179. p. 282.*

1787. *January 31.*

JAMES BUCHAN *against* JAMES ROBERTSON-BARCLAY and Others.

**No 331.**  
The sexennial prescription of a bill of exchange not obviated by a relative writing of equal date with the bill itself.

A DEBTOR of James Buchan transmitted to him, in a missive letter, a bill of exchange for the sums which were due. The letter itself imported an acknowledgment of the debt, and particularised the circumstances attending it.

The debtor some time after became publicly bankrupt, and obtained a *cessio bonorum*; and Mr Buchan, more than *six* years posterior to the term of payment specified in the bill of exchange, took out a decret in absence, and thereupon proceeded to adjudge the debtor's lands.

In the ranking which followed, an objection was made by James Robertson-Barclay, and the other creditors, to the claim of James Buchan, as having fallen under the sexennial limitation of bills of exchange introduced by act 1772, c. 71. James Buchan

*Pleaded*; The missive letter which accompanied the bill, as it would be sufficient, independently of any other document, to constitute a debt, must surely be thought to bring the present case within the exception of the statute of

1772, whereby the sums stipulated in a bill of exchange, or promissory note, may, even after the expiration of the six years, be proved to be *resting owing* by the *writing* of the debtor.

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*2dly*, The present claim might, if necessary, be confirmed by the *oath* of the party. This mode of proof having been recognised by the Legislature itself, cannot be taken away by any change in the situation of the debtor, although it may on that account be liable to suspicions, to which the Court will pay more or less regard, according to the circumstances of the case.

*Answered*; The statute of 1772 being grounded on a presumption, that the debt vouched by a bill of exchange which has lain over for six years, though once due, has been already paid, its effect cannot be precluded by a writing of the same date with the bill itself.

*2dly*, The proposed reference to oath must likewise be inadmissible. Where a debtor has become insolvent, and more especially where, in consequence of his obtaining a *cessio bonorum*, he can scarcely be considered as *personally* liable for the debts contracted by him, no acknowledgment of his ought to be of sufficient authority to prejudge his creditors at large. Erskine, book 4. tit 2. § 10.

The Lord Ordinary sustained the objection. But after advising a reclaiming petition for James Buchan, with answers for James Robertson-Barclay and others,

“ THE LORDS found, that the missive letter produced does not interrupt the sexennial prescription; but that it is still competent to refer the fact of *resting owing* to the oath of the debtor.”

Lord Ordinary, *Anker-ville*. Act. *Maconochie*. Alt. *C. Hay*. Clerk, *Home*.

C. *Fol. Dic. v. 4. p. 103. Fac. Col. No 303. p. 467.*

1787. February 6.

JAMES ROBERTSON and Others, *against* CHARLES MACGLASHAN.

In 1774, Macglashan adhibited his subscription, as acceptor, to a bill of exchange, which was afterwards, in 1779, indorsed to Robertson and others. At this last period, Macglashan was creditor to the indorser in sums far exceeding those contained in the bill.

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Bills retain  
their extra-  
ordinary pri-  
vileges for  
six years.

An action having been brought at the instance of the indorsee, against Macglashan, he

*Pleaded*, It has long been a fixed point, that the extraordinary privileges attending bills of exchange are lost, when these have lain over for three years. After this, instead of being viewed as bags of money, which pass from hand to hand, unaffected by any objections that might be competent against former holders, they are to be considered as mere grounds of debt, with regard to which