

The bill was protested 5th June, by Jean Duncan, and the protest recorded the same day.

David Freer, Writer to the Signet, (12th June 1801) used an arrestment in the hands of Gordon, in virtue of a depending action at his instance against Jean Duncan.

Jean Duncan having indorsed the bill for value, to John Richardson and Company, it was, 13th June, protested at their instance, recorded 15th, and a charge of horning given to Gordon on the 19th June.

Gordon suspended the charge, and raised a process of multiplepointing, in which Freer also appeared, pleading upon his arrestment. These processes were (26th November 1803) conjoined, and the Lord Ordinary (19th June 1804) "in the suspension, found the letters orderly proceeded; and in the multiplepointing, preferred the chargers John Richardson and Company, to the fund *in medio*." To which the Court (19th February 1806) adhered, by refusing a petition with answers.

Freer reclaimed, and

Pleaded: A bill of exchange which has been protested, and the protest recorded, loses its extraordinary privileges, and can only pass from hand to hand by assignation; Ersk. B. 3. Tit. 2. § 31. Since in this case the bill has merely been indorsed to the chargers, it has not yet been legally made over to them, and their whole subsequent procedure is consequently inept.

Answered: Bills pass by indorsation, as well after protest as before; Macadam against Macwilliam, 14th June 1787, No. 171. p. 1613. Besides, here there was nothing in the appearance of the bill which could make it known to the indorsees that it had been previously dishonoured; that any third party had an interest in it, or that its negotiability had been anywise impeded. All that they saw was, that it was past due.

The Court (18th November 1806) "adhered."

Lord Ordinary, *Glenlee*.
Alt. *W. Erskine*.

Act. *Hutcheson*.
Agent, *Jo. Cook*.

Agent, *D. Freer, W. S.*
Clerk, *Mackenzie*.

F.

Fac. Coll. No. 258. p. 579.

1807. June 16. STEPHENSON *against* STEPHENSON'S TRUSTEES.

WILLIAM STEPHENSON advanced a sum of money to his two sons, Joseph and Thomas, to purchase stock for their farms, and obtained from them a promissory-note for £892. 7s. 2½d. dated the 5th of January 1796, payable to him on demand, with interest.

No demand was made either for principal or interest during the life of Joseph and Thomas Stephenson; but after their death, William Stephenson raised an action against the trustees of Joseph, and the children of Thomas Stephenson,

No. 19.
and the protest recorded, but no marking of this made on the face of the bill, a creditor of the drawer uses an arrestment in the hands of the acceptor. The bill is indorsed subsequently for value, and the indorsees are preferred to the arrest-

No. 20.

In a bill payable on demand, prescription runs from its date.

No. 20. for payment of this promissory-note. The action was not raised till January 1804.

The trustees stated in defence the sexennial prescription, and the Lord Ordinary took the case to report.

Against this defence, the pursuer.

Pleaded: The sum contained in the promissory-note was payable on demand. No demand was made till the present action was raised; and as the sexennial prescription introduced by the act 1772, C. 12. begins to run only from the term "at which the sums in the said bills or notes become exigible," it is evident, that prescription has not run in the present case.

It is very true, that in many cases a bill payable on demand becomes exigible the instant it is granted. The same thing may be said of a bill payable at sight. But until the holder of the bill shall fix the term of payment by demanding his money, if payable on demand, or presenting his bill, if payable at sight, the money does not become exigible in the sense of the statute. In the general case, the term of payment is accurately pointed out by the precise day mentioned in the document. But in bills payable on demand, or at sight, the term of payment is fixed by a reference to a particular act to be done by the creditor, and it is then only that the term of payment arrives. If, therefore, prescription were to run from the date of the bill, it would commence before the term of payment. In cases of foreign bills, where the holder and the acceptor reside in different quarters of the globe, it is evident, a bill on demand is not exigible for many months after its date. It is indeed only in very particular cases, that the date of the bill can be the term of payment; and as the tendency of our decisions has been rather to enlarge than to limit the period of prescription, Douglas, Heron and Co. against Grant, Nov. 19. 1793, No. 108. p. 4602. it is impossible to hold that prescription can in any case begin to run before the money contained in the promissory-note becomes payable.

Answered: The indefinite endurance of bills of exchange, and the discrepancy of decisions which necessarily ensued, gave rise to the act 1772, introducing the sexennial prescription, the express object of which was to remedy this grievance. Bills of exchange were introduced for commercial purposes, and it is only in this view that they are invested with extraordinary privileges; but if they were to have an endurance of forty years, they would be applied to other purposes, and thus supersede bonds and all other securities. Accordingly, before the act 1772, this evil was strongly felt; See No. 188. p. 1628; Bankton, B. 1. Tit. 13. § 31. Now, the doctrine of the pursuer would introduce this uncertainty into one class of bills, viz. such as are payable on demand, and put them upon the same footing as bills of exchange were before the enactment of that statute.

The act 1772 declares, that prescription on bills shall run from the time when the debt contained in them "is exigible," *i. e.* from the time when it is in the power of the creditor to demand payment. Now, in bills on demand,

it is in the power of the creditor to call upon the acceptor for payment the day they are granted, and consequently prescription must run from that date. Had it been meant otherwise, it would have been provided, that prescription commenced from the period when the debt was exacted, or payment of it demanded, which is very different from the time when it is exigible; for a debt may be demanded when it is not exigible, and it may be long exigible before it is demanded. By the other construction of the statute, it would follow, that an act which professed to limit the endurance of bills of exchange, should extend the period of endurance of bills payable on demand to an indefinite endurance, because, as the demand may be indefinitely delayed, there is no term from which even the long prescription of forty years can commence. As to foreign bills on demand, cases may be figured where they are not exigible on the day of their date, on account of the distance of the parties. But it was with a view to such contingencies, that so long a period as six years was fixed on as the term of prescription, which is much longer than is requisite in the general case.

The Lords, 14th Jan. 1807, “ find, That the promissory-note libelled on “ is cut off by the sexennial prescription.”

And they afterward, by a very great majority, adhered, upon advising a reclaiming petition, with answers.

It was observed, that both the words of the act 1772 and the general scope of the statute, were in favour of the decision, and that if the opposite doctrine were to be held, we should never see a bond in this country, as a bill payable on demand would supersede all formal securities. Two of the Judges, however, held, that a debt was not exigible, in the sense of the statute, until it was demanded; and therefore, that to give effect to the sexennial prescription, it was necessary that a demand for payment should be made by the holder of the bill*.

Lord Ordinary, *Cullen*.
Alt. *Baird*.

Act. *Monypenny*.
Agent, *W. White*.

Agent. *James Hay*. W. S.
Clerk, *Mackenzie*.

J.

Fac. Coll. No. 283. p. 639.

1807. December 8.

BROWN and COMPANY, against HUTCHISON DUNBAR.

ROBERT OGLE of London drew a bill for £125 on Sinclair Wright of that city. It was indorsed by the drawer to Hutchison Dunbar of Edinburgh, who indorsed it to Brown and Company of Leeds. Brown and Company indorsed

No. 21.

Noting a bill on the day of payment is good negotiation, tho' the protest be not extended till some days afterwards.

* A similar decision was pronounced the same day in the case of Cook against Macjanet, where the Lord Ordinary had repelled the defence of prescription in a bill payable on demand, and the Court altered his Lordship's judgment.