

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.

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.*

S.

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