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. No. 20.

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.*	Act. *Monypenny.*	Agent. *James Hay.* W. S.
Alt. *Baird.*	Agent, *W. White.*	Clerk, *Mackenzie.*

J. *Fac. Coll. No. 283. p. 639.*

1807. *December* 8.

BROWN and COMPANY, *against* HUTCHISON DUNBAR.

No. 21.
Noting a bill on the day of payment is good negotiation, tho' the protest be not extended till some days afterwards.

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

* 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.

No. 21. it to their bankers in London, Messrs. Foster, Lubbocks, and Company. It became payable on the 3d of July 1807, that being the last day of grace; on that day it was presented for payment; and payment being refused, it was noted by William Armstead, a notary, in the usual way, "2, 6 W. A. 3d July 1805."

Thus noted, but without any regular instrument of protest, it was returned to Brown and Company, who wrote immediately to Dunbar in these terms:

"The bill we received from you the 9th of May (say R. Ogle upon Sinclair "Wright, No. 21, Whitehorse Lane, London, from the 30th April 1805, at "two months, amount £125.) is returned to us for non-payment, *but, not being "protested, have returned it* to our bankers to have the needful done. When "we receive it, shall send it to our friend in Edinburgh, who will call upon "you for payment."

Dunbar refused to pay the bill. Brown and Company gave him a charge for payment, which he suspended.

The suspender stated various defences, in particular that the bill had not been protested in due time, and that due notice of the dishonour was not given to him, since the letters of the chargers mentioned the bill *not being protested*, which authorised him to think that it was not negotiated, nor any recourse against him intended.

The Lord Ordinary "Sustained the reasons of suspension."

But on a reclaiming petition and answers, the Court were clear that the *noting* was sufficient negotiation, and that the letter, signifying only that the bill had not yet been *protested*, left fully to be understood the fact that it had been *noted*, which is a common practice, the protest being afterward drawn out in regular form. The Court therefore altered the Lord Ordinary's interlocutor, and sustained the recourse against the suspender.

Lord Justice Clerk, Ordinary. Act. *James Moncrieff.* Alt *James Keay.*
S. Macknight, W. S. and *David Wardlaw*, Agents. *F.* Clerk.

M. *Fac. Coll. No.* 13. *p.* 39.

1808. *June* 24. JOHN SHARP *against* MARGARET HERVEY and Others.

No 22.
An acceptor of a bill, "*as security jointly and severally*," has not the benefit of the act 1695, ch. 5.

ON the 3d June 1796, the pursuer drew a bill, which was duly accepted, as follows:

"£938. 7*s.* 3*d. Sterling.* *Stirling, June* 3, 1796.

"Against the term of Whitsunday next, pay me, or order, at the house of "James Thomson, jun. Stirling, £938. 7*s.* 3*d.* Sterling, for value received of "(Signed) JOHN SHARPE."——(Addressed) "To James Thomson, jun. "Stirling, as principal, and John Hervey merchant there, as security, jointly "and severally. (Signed) JAMES THOMSON, jun. JOHN HERVEY."