

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

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the assignee cannot be in a better situation than the cedent. Thus the same plea of compensation that could have been successfully used against the indorser of the bill in question, must be equally available against his indorsees. Erskine, book 3. tit. 2. § 37.

Answered, At any time prior to the year 1772, the defender's argument would have been of considerable weight; but as bills of exchange have since been declared, during six years, to be legal and probative documents, no reason can be assigned, why the duration of their extraordinary privileges should be limited to a shorter period.

The plea urged for the pursuer had been formerly recognised by the Court, though no precise determination had ever been given on the point.

THE LORDS adhered to the judgment of the Lord Ordinary, 'in repelling the defences.'

Lord Ordinary, *Rockville.* Act. *C. Hay.* Alt. *Geo. Fergusson.* Clerk, *Menzies.*
C. *Fol. Dic. v. 4. p. 103.* Fac. Col. No 309. p. 477.

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1792. May 23. WILLIAM HENRY RALSTON *against* JOHN LAMONT.

THE sexennial limitation of bills does not affect the claim of recourse competent to the acceptor of a bill against the drawer.

Fol. Dic. v. 4. p. 103. Fac. Col.

* * * This case is No 115. p. 1533. *voce* BILL of EXCHANGE.

No 334.

The sexennial limitation of bills, how far affected by relative writings during the six years, or afterwards.

1792. May 23. JAMES RUSSEL *against* JAMES FAIRIE.

FAIRIE, on 8th May 1782, granted to the mother of Russel a bill of exchange for L. 92, payable one year after date.

On the bill were marked a variety of partial payments, the latest dated in September 1788. Three of the markings were in Fairie's hand-writing; the last of these, however, was in 1786.

After Mrs Russel's death, there having been many transactions between her and Fairie, a correspondence took place between him and her son. In March 1789, Fairie desired Russel 'to send a copy of the bill, and the payments made 'on the back of it, so that he might settle the balance.' And in July 1789, after the expiration of the six years, he again wrote in similar terms.

At last an action was brought by Russel against Fairie, for the sums appearing to be due, after deduction of the partial payments as marked on the bill.

The defender *alleged,* That he had made other advances to the full amount, trusting that the creditor would have carefully noted them. At any rate, he