

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

IN an action of multiple-poining, brought for authorising the distribution of effects which had belonged to a person deceased, Lamont claimed as a creditor, in consequence of his having honoured two draughts by the deceased upon him; the one dated in 1778, and the other in 1779.

Ralston, a competing creditor, objected to this claim, as cut off by the sexennial limitation of 12th Geo. III. cap. 72.; and, in support of the objection,

Pleaded: The enactment in general provides, that no bill of exchange, or inland bill, shall be effectual to produce action, unless within six years from the term of payment; and it is of no consequence whether the action is to be brought by the drawer against the acceptor, or by the holder against the drawer, acceptor, or indorsers, or by the acceptor against the drawer, for his relief. This seems no less evident from the words of the enactment, than from its object; which clearly was to limit all obligations arising from transactions of this sort, within such a short period as was suitable to their nature and general use.

Answered: The actions precluded by the statute, are those which naturally arise out of the bills, and in which the pursuers rest upon these documents as the sole foundation of their claim. Such are those brought by the drawer or holder against the acceptor for payment, or by the holder against the drawer or indorsers, for recourse. The present case is of a quite different nature, the production of the bill being only useful as a circumstance of evidence. The obligation itself, or the right of action, arises from the advance of the money, which may be proved in many different ways.

THE LORD ORDINARY repelled the objection.

In a reclaiming petition, besides the argument on the statutory limitation, it was contended, That the bills having been accepted in general terms, a presumption arose, that, at the time, the acceptor had in his hands effects belonging to the drawer. That presumption, however, appeared to be sufficiently obviated by the circumstances of the case.

After advising the reclaiming petition with answers,

THE LORDS adhered to the Lord Ordinary's interlocutor. See PRESCRIPTION.

Ordinary, Lord Justice-Clerk.

For Ralston, Montgomery.
Clerk, Menzies.

For Lamont, Macleod-Bannatyne.

Fac. Col. No 211. p. 443.

No 115.

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