

1775. November 30. WILLIAM CHEAP, Factor on the Sequestrated Estate of Arthur Miller, *against* MARGARET CORDINER.

PRESCRIPTION.

The triennial prescription not obviated by production of a written commission for the goods.

[*Faculty Collect. VII.* 141; *Dictionary*, 11,111.]

KAIMES. The exception of written obligations in the Act of Parliament, means an obligation valid in law: here there is no evidence of the delivery of goods: if the letter in Miller's copybook of letters is sufficient, you must also suppose that the bill was sent and accepted of: if the bill had not been accepted and paid, there must surely have been some demand of payment.

COALSTON. Here is a letter commissioning the goods,—a circumstance which had great weight, perhaps too great weight in a former case: there is also a letter from the seller, bearing the shipmaster's receipt inclosed: there is therefore evidence by writing, not only of the commission, but of the delivery.

ALEMORE. The Act of Parliament under consideration is exceedingly useful: a written obligation is necessary after three years. It is not sufficient to prove that the goods were delivered. A written obligation is necessary to prove resting owing: surely writing is not stronger than the parties' oath; and yet if you refer delivery to oath, and if delivery is so proved, it will not avail for proving *resting owing*.

MONBODDO. A letter sent to a shopkeeper commissioning goods, together with proof of delivery, is not sufficient to stop prescription.

JUSTICE-CLERK. It never occurred to me, on clearing accounts with workmen, to take up all my orders for executing such work. The existence of the order will not prove that the work remained unpaid after three years.

COVINGTON. At the same time that the shipmaster's receipt is sent, a bill also is sent; no demand is made on it: we must presume that the bill was accepted and paid.

HAILES. When the purchaser commissioned the goods, he declared that the shipmaster's receipt should be as good as his own receipt. Had the seller kept that receipt, there would have been a full written obligation, which the Act, as to short prescription, would not have affected; but, instead of that, the seller sent the shipmaster's receipt as a bill of loading, and asked a bill in its place, so that all that remains with him, is a letter of commission, which of itself will not prove *resting owing*.

On the 30th November 1775, "The Lords found that no action lies on this account;" altering Lord Elliock's interlocutor.

*Act.* J. M'Laurin. *Alt.* Ch. Hay.

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