

as in this case Mr Innes *non statum dixit* when he received the indefinite payments, but only posted them in general to account, the imputation ought to be made to the extinction of that debt, *ex qua tanquam solvebat ad solvendum compelli poterat*. See Voet. tit. De solu. et liber. § 16. ; l. i. §. 2. D. h. t. ; l. i. C. h. t. Ant. Fab. Cod. lib. 8. tit. 30. Dis. 31. And Carps. defin. in forens. part 2. const. 29. defin. 17. Juris c. Holl. part 3. vol. i. consil. 145. quest. ult.

THE LORDS found, That the imputation of the payments made both before and after the arrestments, must be to Sir John Gordon's debt, and not to the debt on which the arrestment was used,

*C. Home, No 133. p. 226.*

1779. *March 2.* JOHN STRETTTEL *against* JAMES POTTS.

IN 1763, James Potts and John Elliot engaged in a company trade at Quebec, and commissioned from John Strettel merchant in London different articles, for which it was agreed that they should have nine months credit from the time of furnishing. This company turned out unsuccessful, and Potts and Elliot were obliged to leave off trade ; at which time they were in considerable arrear to Strettel. Potts having returned to Scotland, his native country, Strettel brought an action against him for payment of L. 498, as the balance due by the company. In the state of accounts made up by the pursuer, from which the balance was struck, he had charged interest upon the goods furnished, from the period of nine months after they were shipped, and had applied the remittances from Potts and Elliot at the time of receiving them to the extinction of these interests in the first place, and the remainder only to extinction of the price.

*Objected* by the defender to this mode of stating the accounts ; When a debt is constituted by bond or bill, it is no doubt the rule of law, that partial payments must be applied to extinction of the interest before they can affect the capital sum. But, in the case of mercantile accounts, a different method is followed, both in this country and in England, where the transaction took place, and by the law of which, therefore, the question ought to be determined. The partial payment is, at the time when received, applied to extinction of the capital, and interest is charged thereafter only on such part of the capital as remains after deduction of that payment. The interests are kept in a separate column, until the account is finally closed, when they are added to the principal sums.

Merchants adopt this method of settling accounts for an obvious reason. If they were to apply the partial payments to extinction of interest in the first place, their correspondents would have no encouragement to make remittances. They would be losers by remitting ; for, if they kept the money in their own hands, they would have the use of it until they were able to pay off the whole

No 10.

No 11.  
Where a merchant's account has been long due, and interest is current upon it, an indefinite payment imputes to the extinction of the interest, and not of the principal.

No 11. account, when the merchant would only be entitled to his principal and interest from the time it fell due.

*Answered* for the pursuer; There is no solid distinction betwixt payments made on mercantile accounts, and those made on other debts by bond or bill. After the nine months for which credit was stipulated, the pursuer was equally entitled to interest on the price of the goods, as if he had taken a bond for the price. The pursuer deals only in buying and selling on commission, and he purchased with his own money the goods sent to this company. The interest of that money he would have received yearly, if it had not been bestowed in this manner; and, therefore, justice would not be done him, if the partial payments were not allowed to be applied, at the time they were made, to the extinction of the interest.

As 14 years have elapsed since the goods were furnished, the delay of payment is an additional reason for stating the partial payments to the extinction of interests. The pursuer likewise alleged, that the practice of merchants was in his favour.

As parties differed in their averments with regard to practice, the COURT 'allowed either party to procure proper certificates in England, of the usual mode of stating accounts, such as these in question, and periods of imputing the partial payments, and interest on the whole.' Certificates from merchants were produced by both parties.

THE COURT were of opinion, That no authority or practice had been shown to alter the fixed rule of law, and 'repelled the objection to the stating of the accounts.'

Lord Ordinary, *Justice-Clerk.* Act. N. Ferguson. Alt. Wight. Clerk, Campbell.

*Fol. Dic. v. 3. p. 315. Fac. Col. No 75. p. 145.*

### No 12.

The creditor in an account, of which a part was prescribed, was found entitled to impute partial payments, in satisfaction of articles of his account, three years preceding the date of such payments; though these articles were part of those which had fallen under prescription.

1779. June 30. JAMES GOOD *against* CHRISTIAN SMITH.

JAMES GOOD, in his own name, and as executor decerned *qua* nearest of kin to David Stoddart, brought a process against Christian Smith, executrix decerned to Henry Wilkinson, for an account of wright work done by Stoddart and the pursuer to Wilkinson. The defender pleaded prescription on the act 1579, c. 83.; and it being disputed what part of these accounts was prescribed, it was found by a final judgment of the Court, (in 1776) 'That the accounts pursued for as due to Stoddart and Good fall under the statutory prescription, except for *three years* preceding the execution of the summons for payment of them.' An after question occurred relative to the application of certain partial payments made by Wilkinson to Stoddart, within the period of three years preceding the execution of the summons.