

1794. November 18.

FRANCIS SADDLER and his Attorney *against* MURDOCH M'LEAN.

IN 1774, Francis Saddler, merchant in Liverpool, at the desire of Archibald M'Lean of Lochbuy, employed various tradesmen to build and rig out a pleasure-boat, which he afterwards sent to him in Scotland.

Saddler paid the bills of the different tradesmen, and, in 1791, brought an action for the sums he had advanced, with interest, (but without charging commission) against M'Lean's Representative, who, in defence

*Pleaded*; The debt claimed being for articles provided by a merchant, falls under the triennial prescription, established by 1579, c. 83. 'as a merchant's 'compte;' and even should it not be considered as falling immediately under that description, yet as it is an account of which the pursuer had right to expect immediate payment, and as the prescription in question is founded on the presumption that such debts will be paid within three years, or a written acknowledgment granted for them, it comes under the general words in the statute, of other sicklike debts;' 15th Feb. 1791, Forsyth against Simpson, No 276. p. 11081.

*Answered*; The debt sued for is due to the pursuer, not as a merchant, but as a *mandatarius*, and is totally different in its nature from those mentioned in the act 1579. In the case of a merchant's account, the obligation of the debtor is for the price of articles sold to him by the creditor, and it is only obligations of a similar nature which can fall under the general description of 'other like debts.' If the operation of the statute were extended to a mandatary's claim for indemnification, there is no debt not constituted by writing, which would not by parity of reason be subjected to this prescription, and thus most of the short prescriptions would become nugatory, although established by express statutes; 1740, Drummond against Stewart, No 309. p. 11103.; 13th June 1781, Butchart against Mudie and Rainy, No 318. p. 11113.

The Lord Ordinary sustained the defence of the triennial prescription.

But on advising a reclaiming petition, and answers, it was

*Observed*; It is dangerous to extend the application of statutes introducing prescriptions. In the present case, the pursuer did not act as a merchant, but as a *mandatarius* or factor, and even in this character he has made no charge for his trouble.

The COURT repelled the defence of the triennial prescription.

And on advising a second reclaiming petition, with answers, they unanimously adhered, and found the defender liable in expenses.

Lord Ordinary, *Henderland.* Act. *Jo. Clerk.* Alt. *W. Macleod Bannatyne.*  
Clerk, *Menzies.*

*R. D.* *Fol. Dic. v. 4. p. 106. Fac. Col. No 113. p. 298.*

No 322.

An action founded upon a mandate is not affected by the triennial prescription.