



SCOTTISH LAW COMMISSION

MEMORANDUM No: 9

PREScription AND LIMITATION OF ACTIONS

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N.P. This Memorandum is designed to elicit comments upon and criticism of the proposals which it contains. It does not represent the concluded views of the Scottish Law Commission.

SCOTTISH LAW COMMISSION

PRESCRIPTION AND LIMITATION OF ACTIONS

INTRODUCTION

1. In pursuance of item 3 of our First Programme, we have been examining the law relating to the prescription of rights and obligations and the limitation of actions.

2. For the purpose of this Memorandum, we have grouped the principal existing forms of prescription and limitation of actions under five Heads each of which contains a brief summary of the existing law supplemented in certain cases by more detailed notes, criticisms and suggestions for amendment of the law. The five Heads are:-

I. POSITIVE PRESCRIPTION (Acquisitive Prescription or Usucaption)

relating to the fortification of title to heritable property or rights by possession.

II. LONG NEGATIVE PRESCRIPTION (Extinctive Prescription)

relating to the extinction of rights and obligations in general.

III. SHORTER NEGATIVE PRESCRIPTIONS (Affecting certain contractual rights and obligations)

relating to the restriction in mode of proof or the extinction of certain rights and obligations having a contractual basis.

This group includes the triennial and quinquennial prescriptions of certain kinds of contracts and claims, the sexennial prescription of bills of exchange and promissory notes, the septennial prescription of cautionary /

cautionary obligations and (although the period is comparatively long) the vicennial prescription of holograph writings.

IV. QUINQUENNIAL PRESCRIPTION OF DILIGENCES RELATING TO HERITABLE PROPERTY

relating to the extinction of certain forms of real diligence.

V. LIMITATION OF ACTIONS FOR DAMAGES IN RESPECT OF PERSONAL INJURIES

3. We have also considered whether a shorter period of prescription should be introduced with regard to certain obligations which are not comprehended within the existing Scottish short prescriptions, but are within the scope of the Limitation Act 1939 in England. The most important of these are (1) obligations founded on contract, (2) obligations of accounting, (3) obligations based on delict and (4) obligations arising in respect of trust property or the estates of deceased persons. The first two of these are considered in relation to the form of the existing shorter prescriptions under Head III; the latter two are considered separately under Heads VI and VII. One additional matter which relates to all the prescriptions, the mode of computation of the period, is considered under Head VIII.

4. Our provisional proposals are summarised under Head IX and our views on the form of legislation to give effect to such of our suggestions as may be acceptable are contained under Head X.

Prescription of Moveables.

5. The law of Scotland with regard to prescription of corporeal moveables is unclear and as regards incorporeal moveable rights the views of institutional writers are not wholly consistent with the principles adopted in the comparatively small number of judicial decisions where the matter has been in issue. We have not given particular /

particular consideration to the question of obtaining a title to corporeal moveables or incorporeal rights, but we would welcome views as to the desirability of introducing such a principle.

Prescription of Crimes.

6. Crimes do not prescribe in the law of Scotland. It was at one time understood that, in common with the law of Rome, Scots law provided that no crime could be pursued after the lapse of twenty years from its commission, and this was always described as a prescription, although there was no statute to that effect. The case of H.M. Advocate v. Sugden, 1934 J.C. 103 decided, however, that the vicennial prescription of crime formed no part of the law of Scotland. As the law on this topic is certain and, so far as we are aware, there has been no evidence of a desire to alter it, we have not considered the matter further in this Memorandum.

7. While there is no general prescription of crime, there are numerous statutory time-limits upon the bringing of criminal proceedings; these do not seem to be governed by legal principles, being dependent upon the expediency of having a time-limit in relation to the particular offence, and they are accordingly not dealt with in this Memorandum.

The Council of Europe.

8. The Council of Europe, of which the United Kingdom is a member, has a Committee on European Legal Co-operation. This Committee set up a Sub-Committee on Fundamental Legal Concepts and one of the subjects studied by this Sub-Committee was "time-limits", i.e., prescription and limitation of actions. A member of our staff has been the adviser on Scots law to the United Kingdom delegate, and the same member of our staff is a member of the United Kingdom delegation on the Committee of Experts which has been set up following the report of the Sub-Committee.

9. /

9. The Committee of Experts is at present chiefly concerned with extinctive prescription which, in Scottish terms, comprises the negative and septennial prescriptions and limitation of actions within the meaning of the Law Reform (Limitation of Actions, etc.) Act 1954 as amended. The main emphasis within this extinctive prescription is, so far, on matters of contract and delict.

10. We have, through our representation on the Committee, kept in close touch with developments, and in formulating our proposals we have endeavoured to take account of these developments.

Consultation.

11. We have consulted the Faculty of Advocates and the Law Society of Scotland informally on two points relating to prescription on which the European Committee of Experts wished to have views urgently. So far, there has been no consultation outside the Commission concerning the proposals in this Memorandum, and we are publishing it in the hope that we shall receive comments not only from lawyers, but from individuals and organisations representing both the business community in its widest sense and the consumer. The Memorandum does not represent the concluded views of the Scottish Law Commission.

I POSITIVE /

I. POSITIVE PRESCRIPTION

12. Positive or acquisitive prescription or usucaption relates to the fortification by possession of the title to heritable property or rights. Most legal systems have rules whereby possession of land for a period of years validates the possessor's title of ownership or creates some form of possessory title. In Scots law the rules of positive prescription do not protect a possessor of property without title but operate to perfect a defective title which is ex facie valid.

Existing Law.

13. While there are traces of a common law doctrine of prescription in such matters as prescription of servitudes and rights of way, for all practical purposes the law of positive prescription is wholly statutory, the principal statutes on which it is based being the Prescription Act 1617 c.12, the Conveyancing (Scotland) Act 1874 s.34 and the Conveyancing (Scotland) Act 1924 s.16.

Heritable Property

14. (1) The prescription applies to heritable property and heritable rights based on recorded titles, including rights to salmon fishing and minerals. For the prescription to operate there must be an ex facie valid irredeemable title duly recorded in the appropriate Register of Sasines followed by possession for the prescriptive period. The prescription does not apply in cases where the title in question is a forgery or has a patent intrinsic nullity such as a defect in the statutory solemnities of execution. It is no objection to the plea of prescription that the title proceeds from a party who had no title to the lands in question or no right to dispose of them, and a party may plead prescription even in the knowledge that he has been in possession on a defective title.

(2) The period of the prescription is twenty years. The period is probably forty years in the cases of both a registered and an unregistered leasehold title, although it is arguable that, at least in the case of a registered leasehold title, the period is now twenty years. The period in respect of registered titles commences at midnight of the day of infestment.

(3) The prescription (i) excludes all enquiry into the previous titles and rights to the lands, thereby protecting the holder of the prescriptive title against any person alleging a better title, (ii) may determine the extent of an estate where there is an ambiguity or lack of specification in the title, and (iii) may merge a title of property (dominium utile) in the higher title of superiority (dominium directum) and thus effect consolidation. On the other hand a prescriptive title cannot be obtained to subjects which have been possessed for the prescriptive period when the title clearly excludes these subjects.

(4) The prescription may be interrupted judicially or extra-judicially. Extra-judicial interruption may be effected by demanding and obtaining or by effectually assuming possession of the subjects, or by notarial protest. Judicial interruption may be effected by citation, by an action brought into court, or by the presenting of, or concurring in, a petition for sequestration, or the lodging of a claim in a sequestration or in a liquidation. The running of the prescription is not affected by the fact that the party against whom the prescription is pleaded is in minority or less age or is under legal disability.

Servitudes, and Rights of Way and Other Public Rights

15. (1) The positive prescription also applies to servitudes and to rights of way and other public rights. Positive servitudes may, and negative servitudes must, be constituted by express grant, and prescription /

prescription operates to perfect any defect in the grant. Positive servitudes may also be created by exercise of the right for the prescriptive period without any antecedent grant and rights of way and other public rights are also created by use for the prescriptive period without written grant.

(2) The period of the prescription in the case of servitudes and rights of way and other public rights is forty years.

(3) The effect of the prescription following upon a written grant of a servitude right is to exclude enquiry into the title of the grantor. The terms of the grant determine the measure of the rights but the extent of the possession during the prescriptive period may be definitive where there is any ambiguity of expression in the grant. In the case of positive servitudes created only by use for the prescriptive period and rights of way and other public rights, possession during the prescriptive period constitutes the right and determines its extent.

(4) The prescription may be interrupted judicially or extra-judicially. In contrast to the position of positive prescription of heritable property, the minority or less age or legal disability of the party against whom the prescription is pleaded are competent defences to the plea of prescription.

Criticisms and Suggestions.

Heritable Property

16. Foundation of Prescriptive Title. We have considered possible amendments in the conditions requisite for the operation of the positive prescription as applicable to heritable property and rights based on recorded titles. It may seem strange that, on the one hand, a possessor in bad faith, holding on a title from a person whom he knows could not lawfully grant it, should have the benefit of the prescription, while, on the other hand, a possessor in good faith, holding on a title which suffers from a patent but not serious error in /

in execution of the kind which may be cured by the Conveyancing (Scotland) Act 1874 s.39, should not have the benefit of the prescription. Similarly it may seem strange that, even when there is a decree of declarator of the expiry of the legal, a period of forty years possession is required to found a prescriptive progress when the foundation writ is a recorded extract decree of adjudication for debt and that such a title cannot obtain the advantage of the twenty years prescription merely because it is technically redeemable. Before deciding whether any of the foregoing points are of sufficient importance to merit any alterations in the law, we would welcome views on the subject.

17. Notices of Title and Notarial Instruments as Foundation Writs.

We propose one minor amendment with regard to the basis of title for positive prescription. The Committee on Conveyancing Legislation and Practice, the Halliday Committee, in its Report (Cmd. 3118 - December 1966) recommended (in paragraph 67) that notices of title and notarial instruments should be accepted as a sufficient foundation for prescription without production of the warrants upon which they proceed. We accept the reasons given for that recommendation and agree with it.

18. Period of Positive Prescription.

(1) Feudal Property

The principal question which requires consideration is whether the period of the prescription for feudal property, at present twenty years, could safely and with advantage be shortened. The Halliday Committee expressed the view (in paragraph 59 of its Report) that, having regard to the reliable system of public registration of deeds affecting land in Scotland, the period is unnecessarily long and that its reduction would substantially lessen the work of examination of title and would result in defects in title being more quickly remedied. The Committee recommended a reduction in the period /

period from twenty years to ten years. We are conscious that a period of ten years is comparatively short for a prescription of this kind, but experience indicates that, once a title to land in Scotland has been recorded and possession has followed, it is most unusual for the title to be successfully challenged more than ten years later. We consider that a reduction in the period to ten years could safely be made.

(2) Leases.

Under the existing law there is a distinction, as regards the period of positive prescription required, between a feudal title and a leasehold title. In the case of the latter the period probably is still forty years whether or not the lease is registered. We consider that there is no sufficient reason for the distinction between a feudal title and a registered leasehold title and we suggest, in accordance with the recommendation of the Halliday Committee (in paragraph 59 of its Report), that the period of the positive prescription should be reduced to ten years where the foundation writ is a registered leasehold title. We would welcome views as to what provision should be made for an unregistered lease.

Servitudes, Rights of Way and other Public Rights.

19. The Halliday Committee also considered (in paragraph 61 of its Report) the period of positive prescription required for the constitution or proof of existence of servitudes and rights of way and other public rights, which at present is forty years, and recommended the reduction of the period from forty years to twenty years. Since a positive servitude or right of way may be created by possession for the prescriptive period alone, the period necessary should be longer than that required to fortify a title based on a written grant. Making due allowance for this distinction we think that the existing period of forty years is unnecessarily long and that the provision of evidence necessary to establish the right over so long a period presents practical problems. If a positive servitude or right /

right of way has been exercised without interruption for twenty years it is reasonable for the law to protect the possessor or the public against belated interference. Even when the person against whose interests the servitude is used is in minority or less age or is subject to legal disability, his property will normally be administered on his behalf and with reasonable vigilance the exercise of the servitude should have been challenged within twenty years. For these reasons we agree with the recommendation of the Halliday Committee that the period of positive prescription applicable to these rights should be reduced to twenty years, and we add the suggestion that in the computation of the period no deduction or allowance should be made on account of the years of minority or less age or the legal disability of the person against whom the prescription is used.

II LONG /

II. LONG NEGATIVE PRESCRIPTION

20. The long negative or extinctive prescription applies to rights and obligations in general, whether or not they relate to heritable property, save that it does not extinguish a real right in heritable property. It is based upon the desirability of setting some limit of time within which the creditor in an obligation must pursue it so that the debtor is not subjected to a claim which with reasonable diligence on the part of the creditor should have been made earlier. In Scotland its effect is to extinguish the rights and obligations completely on the expiry of a period which in most cases is twenty years.

Existing Law.

21. (1) The principal statutes on which the law of negative prescription is now based are the Prescription Act 1617 c.12 as amended by the Conveyancing (Scotland) Act 1924 s.17.

(2) The principal categories of rights and obligations affected by the negative prescription are (i) loans of money, including sums placed on current account with banks, sums due under personal bonds and heritably secured loans and claims under corroborative obligations even although the principal obligation has been kept enforceable by payment of interest, (ii) rights to recover or claim money, such as claims to legal rights in the estate of a deceased person, claims to recover money paid in error, claims for arrears of periodical payments such as feu-duty or annuities and claims for damages and (iii) rights to enforce the provisions of contracts or to reduce a contract or deed on an extrinsic ground such as fraud, although reduction on the ground of an intrinsic defect in a deed is not affected. The prescription also applies to rights to land which are merely personal and rights to servitudes and rights of way /

way and other public rights. It does not apply to any other rights in heritable property, to rights which are res merae facultatis i. e., rights of such a character that their exercise would be expected only periodically or irregularly, and to the obligations of trustees to account for trust funds to beneficiaries.

(3) The period of the negative prescription, formerly forty years, is now twenty years, except in the cases of a servitude and a right of way and other public right when the period is forty years. The point of time from which the prescriptive period begins to run depends on the nature of the right or obligation affected. In the case of a debt the period starts from the date when the debt became payable; in the case of a claim for damages, from the date when it became possible to assert it; in the case of a positive servitude, from the date of the last exercise of the servitude; in the case of a negative servitude from the date of the owner of the servient tenement doing something which is inconsistent with the restraint laid upon his property; and in the case of a claim to legal rights in the estate of a deceased person, from the date of the death which gave rise to the claim.

(4) The negative prescription may be interrupted judicially by appropriate action in court or claiming in judicial proceedings or diligence. It may also be interrupted extra-judicially by any act involving admission by the obligant of the adverse right, such as payment to account of principal or payment of interest. The running of the prescription is not affected by the fact that the party against whom the prescription is pleaded is in minority or less age or under legal disability, except in the cases of a servitude and a right of way and other public right. A person may, however, avail himself of the equitable plea of non valens agere cum effectu in order to suspend the running of the prescription.

Criticisms and Suggestions. /

Criticisms and Suggestions.

22. Period of Negative Prescription. The Committee on Registration of Title to Land in Scotland, the Reid Committee, in its Report (Cmnd. 2032 - July 1963) suggested (in paragraph 76) that the period of the long negative prescription should be reduced from twenty years to ten years. The Halliday Committee (in paragraph 60 of its Report) found that suggestion unacceptable and recommended that the period should not be reduced to less than twenty years. The Halliday Committee's reasons for their recommendation were that to reduce the period of negative prescription of obligations in general to less than twenty years would be unreasonable and might operate to the prejudice of a pupil creditor, that the proposed reduction in the period of the positive prescription would, without any alteration in the period of negative prescription, substantially secure the benefit of reducing the period of examination of titles to heritable property, and that the retention of the existing period of negative prescription would afford some measure of protection against any risks involved in reducing the period of positive prescription.

23. We have considered the views of both the Reid Committee and the Halliday Committee, and have come to the conclusion that, in the case of an extinctive prescription of such comprehensive scope, there might well be cases in which the extinction of the creditor's right to enforce an obligation in less than twenty years would result in hardship. The situation of a creditor in nonage or under disability is an obvious example. It has been suggested that the rights of a creditor in nonage or under disability could be safeguarded by providing that the running of the prescriptive period should be suspended during such nonage or disability. The prescriptive period could in these circumstances, it is suggested, be reduced to ten years thereby reducing the number of different periods required in our law of prescription. The simplification in the law is, however, /

however, more apparent than real as an undesirable element of uncertainty would be introduced. The choice is between having the same period for both the negative and positive prescription, but allowing the period in the negative prescription to be extended depending on the minority or less age or legal disability of the creditor, and having two certain periods for these two prescriptions. On the whole we support the recommendation of the Halliday Committee that the period of the negative prescription of rights and obligations generally should remain unchanged.

24. We have considered whether the plea of non valens agere cum effectu should continue to be available as a defence to the operation of the negative prescription. The circumstances in which the plea is applicable have been much reduced by the statutory exclusion of the defence of minority or less age, and legal disability, but extra-ordinary cases may yet occur in which the failure to prosecute a claim may be justified by extrinsic factors. We consider that the plea should be retained to meet such cases. On the other hand it may be thought that the possibility of such cases occurring is too remote to warrant retention of the plea of non valens agere cum effectu, and that it should be abolished in the interests of certainty. We would welcome views on this question.

25. The Halliday Committee did, however, suggest (in paragraph 61 of its Report) one alteration in the period of negative prescription, namely, that the period of forty years' disuse necessary to extinguish a servitude or a right of way or other public right should be reduced to twenty years. In the case of private servitude rights created over one property for the benefit of another, we agree that it is reasonable that, if the right has not been exercised or its breach has gone unchallenged for a period of twenty years, the law should treat the right as extinguished. We have more difficulty /

difficulty in accepting that a public right of way or other public right, once constituted, should be lost too readily by non-use. For example, the usefulness of a public right of way may be temporarily diminished and subsequently revived by successive land developments in the locality, or changes in public interest may result in disuse for a period followed by a revival of interest. On the whole we agree with the recommendation that the period of disuse necessary for the extinction of private servitudes and rights of way should be reduced to twenty years. As regards public rights of way, local planning authorities now have valuable powers under the Countryside (Scotland) Act 1967 which afford a considerable degree of protection to the public in relation to paths and long distance routes, and we consider that in these circumstances the period of the negative prescription applicable to public rights of way and other public rights should also be reduced to twenty years, but we would welcome the views of other bodies on the subject. Again we suggest that in the computation of the period as regards private servitude rights no deduction should be made in respect of the years of minority or less age or legal disability of the person against whom the prescription is used.

III SHORTER /

III. SHORTER NEGATIVE PRESCRIPTIONS

26. Under this heading we consider various special prescriptions all of which are applicable to certain rights and obligations based upon agreement or promise. These are:-

- (1) The Triennial Prescription based on the Prescription Act 1579 c.21 (c.83).
- (2) The Quinquennial Prescription based on the Prescription Act 1669 c.14 (c.9), excepting as regards arrestments.
- (3) The Sexennial Prescription of Bills of Exchange and Promissory Notes based on the Bills of Exchange (Scotland) Act 1772.
- (4) The Septennial Prescription of Cautionary Obligations based on the Cautioners Act 1695 c.7 (c.5).
- (5) The Vicennial Prescription of Holograph Writings based on the Prescription Act 1669 c.14 (c.9).

Existing Law.

Triennial Prescription

27. (1) The basic statute is the Prescription Act 1579 c.21 (c.83).

(2) This prescription applies to all actions of debt for the rents of urban houses, for board and lodging, for arrears of aliment due under a contract, express or implied, for wages and salaries claimed in respect of a contract of service, express or implied, for accounts for professional charges, and for accounts of retail merchants and tradesmen. The prescription does not apply to claims founded on written obligations, to mercantile transactions between manufacturer and merchant or merchant and merchant, to accounts current between merchants in which there are goods furnished or services rendered on both sides of the account and to what are, in substance, demands for accounting between mercantile or other agents or mandatories and their principals.

(3) /

(3) The period of the prescription is three years. The point of time from which the three years begins to run depends on the character of the transaction. Where payments should have been made periodically, as rent, wages, monthly accounts, instalments of the price, the relevant time is when each payment fell due. In the case of continuous accounts for professional charges or goods or services supplied by retail merchants or tradesmen prescription runs from the date of the last item and is unaffected by the fact that trading continues between the parties provided the account of which the items form part has been definitely closed. An account does not cease to be continuous because its items vary in character and value or because there is a gap of three years between certain of the items, provided that the employment or course of dealing has been continuous.

(4) The effect of this prescription is not to extinguish any right or obligation but to impose a limitation upon the mode of proof, whereby, after the expiry of the prescriptive period of three years, such right or obligation may be established. The creditor has to prove both the constitution and restingowing of the rights or obligations affected by the prescription and in this proof he is limited to the writ or oath of the debtor.

(5) The prescription may be interrupted by founding on the claim in any competent judicial process during the prescriptive period, even if that process has not been completed or pursued to an effective conclusion. The presenting of, or concurring in, a petition for sequestration, or the lodging of a claim in a sequestration or liquidation also interrupts the prescription. The prescription is not pleadable if the action of the debtor has been the cause of the pursuer's failure to bring the action within the prescriptive period. The running of prescription is not affected by the fact that the creditor is in minority.

Quinquennial Prescription /

Quinquennial Prescription

28. (1) The basic statute is the Prescription Act 1669 c.14 (c.9).

(2) This prescription applies to (i) contracts of sale, hiring, pledge and other consensual contracts which are not, in fact, constituted by writing, (ii) arrears of rent in respect of both urban and rural subjects whether the lease be written or verbal, the prescriptive period commencing on the date of the tenant's removal from the lands, (iii) arrears of ministers' stipends and (iv) actions proceeding upon a certain class of claims which are themselves subject to a short prescription. The prescription does not apply to an obligation to account as between agent and principal nor to obligations to return, or to account for, goods deposited in safe custody, or in security, or removed by the defender without authority.

(3) The period of the prescription is five years.

(4) The effect of the prescription is not to extinguish the right or obligation but to impose a limitation upon the mode of proof whereby, after the expiry of the prescriptive period of five years, such right or obligation may be established. The creditor has to prove both the constitution and resting owing of the rights or obligations affected by the prescription and in this proof he is limited to the writ or oath of the debtor.

(5) The prescription may be interrupted by any competent judicial claim during the prescriptive period even if the process has not been completed or pursued to an effective conclusion. The presenting of, or concurring in, a petition for sequestration, or the lodging of a claim in a sequestration or liquidation also interrupts the prescription. The prescription does not run against minors during their minority.

Sexennial Prescription /

Sexennial Prescription

29. (1) The basic statutory provision is contained in section 37 of the Bills of Exchange (Scotland) Act 1772.

(2) This prescription applies to all bills of exchange and promissory notes, except bank notes.

(3) The period of the prescription is six years.

(4) The effect of the prescription is not to extinguish the debt contained in the bill of exchange or promissory note but to impose a limitation upon the mode of proof whereby, after the expiry of the prescriptive period of six years, such debt may be established. The creditor has to prove by writ or oath both the constitution and resting owing of the debt contained in the bill of exchange or promissory note. If, however, the bill of exchange or promissory note is granted as additional security for an obligation under some other contract, e.g., a loan, the basic contract may be proved by any competent evidence despite the fact that prescription has run upon the bill or note.

(5) The prescription may be interrupted by any competent judicial process raised on the bill or note during the prescriptive period even if that process has not been completed or pursued to an effective conclusion. An action against one of several obligants in a bill also interrupts the running of the prescription against the other obligants. The presenting of, or concurring in, a petition for sequestration, or the lodging of a claim in a sequestration or liquidation also interrupts the prescription. A verbal acknowledgment of liability within the prescriptive period is, however, insufficient to effect interruption as also is a written statement of claim not followed by any other action. The prescription does not run against minors during their minority.

Septennial Prescription /

Septennial Prescription

30. (1) The basic statute is the Cautioners Act 1695 c.7 (c.5).

(2) Two types of cautionary obligation are affected by this prescription, namely, (i) an obligation where the cautioner is bound in the same writing as the principal debtor and is, by the form of the bond, bound expressly as cautioner and (ii) an obligation where the cautioner is bound as principal, or co-principal, and is shown to be a cautioner by a clause of relief in the bond itself or by a separate bond of relief formally intimated at its execution to the creditor. Further, the prescription only affects those cautionary obligations in which the creditor might do diligence, if occasion arose, at some time within the seven years.

(3) The period of the prescription is seven years.

(4) The effect of the prescription is to extinguish completely the cautioner's obligation after the expiry of the period of seven years and a new obligation is necessary after that period to impose any liability upon the cautioner.

(5) Diligence done or a decree obtained against a cautioner within the seven years will deprive him of the benefit of the prescription, but will not render him liable for interest falling due after the prescriptive period. It is doubtful whether the mere raising of an action is effective interruption. The presenting of, or concurring in, a petition for sequestration, or the lodging of a claim in a sequestration or liquidation also interrupts the prescription. The running of the prescription is not affected by the fact that the creditor is in minority.

Vicennial Prescription

31. (1) The basic statute is the Prescription Act 1669 c.14 (c.9).

(2) This prescription applies to all holograph writings upon which an obligation can be founded, whether the writing itself expresses /

expresses the obligation or is merely evidence from which an obligation can be inferred.

(3) The period of the prescription is twenty years commencing from the date of the holograph writing even when the obligation to which it refers is future or contingent.

(4) At the end of the prescriptive period the holograph quality of the whole of the writing, except in the case of entries in account books, when proof of the authenticity of the signature is enough, must be established by the defender's oath. If the writing is shown by the oath to be holograph, it has the same effect as if the prescription had not applied, the ordinary rules as to proof of payment or discharge of the obligation contained in it come into operation, and there is no onus upon the pursuer to prove that it is still resting owing. If the oath does not establish the holograph quality of the writing, it cannot be founded upon even as an adminicle of evidence in proof of the obligation.

(5) The prescription may be interrupted by the raising of an action upon the holograph writ, by a plea of compensation being founded upon it in the defences to an action or by diligence being done upon it. The presenting of, or concurring in, a petition for sequestration, or the lodging of a claim in a sequestration or liquidation also interrupts the prescription. Payment of interest on the obligation throughout the prescriptive period probably does not interrupt the prescription. The prescription does not run against minors during their minority.

Criticisms and Suggestions.

32. The various shorter prescriptions, based on old statutes, have been the subject of considerable judicial and professional criticism. Our conclusion, as after appears, is that these criticisms are justified and that the law is in need of a comprehensive reappraisal.

We /

We approach the problem by considering the particular defects of the various existing shorter prescriptions and the need for statutory restatement of the law. We then make suggestions as to the reforms which we consider desirable.

Triennial, Quinquennial, Sexennial and Vicennial Prescriptions - Proof by Writ or Oath.

33. In the case of the above four prescriptions, the effect of expiry of the prescriptive period is not to extinguish completely the right or obligation but only to limit the mode of proof of its constitution, or of its constitution and resting owing, to the writ or oath of the debtor. The law with regard to proof by writ or oath is now voluminous; a summary of the principles of it is contained in the Note which forms Appendix A. It is evident from that Note that this procedure has resulted in a very considerable volume of litigation, involving decisions not always consistent with each other, and that it has posed many difficult problems and may yet occasion more. We seriously doubt whether the process of reference to the writ or oath of the defender in the case of rights, obligations and documents affected by prescription is now appropriate. Our doubts are occasioned partly by the defects which have been revealed from experience of the operation of the procedure and partly by considerations of general principle.

34. The main defects which appear from the operation of proof by writ or oath in practice are:-

(1) The amount of litigation, much of it on procedural points, which has resulted from proof by writ or oath of obligations affected by the shorter prescriptions has occupied the time of the courts and has involved expense to parties which are frequently disproportionate to the importance of the transactions concerned. In particular, the following matters have caused difficulty:-

(i) /

- (i) the competency of, and the evidential weight to be attached to, writs dated before and after the end of the prescriptive period,
- (ii) the writings which may be admitted or recognised as writ of the debtor,
- (iii) the extent to which apparently false evidence of the debtor can be controverted by previous specific admissions or negative evidence can be countered by presumptions that the debtor must be able to recall the circumstances of the transaction,
- (iv) the interpretation of judicial admissions,
- (v) the problem of whether qualifications of an oath are intrinsic or extrinsic and
- (vi) the problem of reference to oath when the debtor is deceased or is a company.

(2) It is questionable whether reference to the debtor's oath has been shown to be a satisfactory mode of proof. We accept that it is reasonable to ensure that debtors shall not be subjected to actions at law in respect of obligations or documents of a kind which, in the ordinary course of business, should have been pursued or founded upon earlier. We doubt, however, whether the proper remedy is to substitute for the testimony of witnesses the word of the least independent witness, the debtor himself, which must be accepted "however palpably and disgracefully false it may appear" (Hunter v. Geddes (1835) 13 S.369 (per Lord Jeffrey at p. 377)). Moreover, the concept of reference to oath has become less appropriate in the circumstances of modern business where many transactions are carried on by incorporated companies.

(3) /

(3) The law relating to proof by writ is also in a somewhat unsatisfactory state. For example, there has been conflict of judicial opinion, not yet conclusively resolved, as to whether the writ must be dated after the end of the prescriptive period to afford acceptable evidence of resting owing. Further, the recoverability of a debt may depend upon the accident of the existence of unsigned jottings or the acceptance of some writ of the creditor which can be treated as constructive writ of the debtor. It is plainly right that a writ of the debtor acknowledging or admitting the debt should have the effect of interrupting prescription, but some clarification is required as to the nature and characteristics of the writing which will have that result.

35. As a matter of legal principle, the substitution of this limited mode of proof of certain claims after the expiry of a prescribed period is open to serious criticism. The logical penalty upon a creditor who fails to pursue such claims timeously is that he should be denied a right of action altogether or even that the obligation should be totally extinguished, and the greater severity of the penalty might be mitigated by permitting a rather longer period for recovery. To substitute proof by oath of the debtor for proof at large tends to confer legal advantage on the dishonest debtor. To permit obligations of a short term character to be recoverable for twenty years solely because there is writing of any kind, even constructive writ, seems unjustifiable: written acknowledgement or admission by the debtor should suspend the operation of prescription but the law should state precisely the kind of writing necessary to have that effect.

Triennial and Quinquennial Prescriptions

36. We consider that it is right that a short period of prescription should apply to obligations of the kinds affected by these two prescriptions /

prescriptions but that the method of attaining that object by specifying a series of particular claims to which two different periods of prescription apply is undesirable. It has resulted in a large volume of litigation to determine whether marginal cases were affected by the prescription statutes and has led to distinctions which are difficult to justify, e.g. that the triennial prescription of "housse mailis" applies to rents of urban houses but not farms whereas the quinquennial prescription of arrears of "maills and dewties of tenments" applies to rents of both urban and rural subjects or that the triennial prescription applies to a solicitor's professional fees and disbursements made in a professional capacity but not to advances made in the capacity of factor to his client. Moreover, the particularity of specification of categories, interpreted by old decisions, tends to rigidity of construction and the exclusion of obligations under new types of transaction which cannot be fitted into any of the precise categories expressed in the statutes. We think it preferable that the legislature should prescribe a much broader class of rights and obligations to which a short period of prescription would apply, thus giving the courts a wider discretion as to its interpretation and enabling new types of transaction within the general class to be accommodated without the need for amending legislation.

37. The triennial and quinquennial prescriptions apply only to debts not founded upon written obligations. This restriction has much decreased the field of their application in modern times, when the increase in literacy and the facilities of typing and reproduction of writing have resulted in more obligations, even comparatively minor ones, being reduced to writing. We consider that the applicability of a shorter period of prescription should be determined primarily by the nature and importance of the transaction and that, while it should be open to parties to elide the application of shorter /

shorter prescription by contracting in solemn form such as attested writ, the operation of shorter prescription should not be excluded in the case of obligations of a short term character merely by reason of the existence of informal writing used in modern business practice.

Sexennial Prescription - Bills of Exchange and Promissory Notes.

38. The main criticism which we make of this prescription is with regard to the length of the period. Bills of exchange and promissory notes are now generally granted in transactions of a comparatively short term character and we consider it would not be unfair to creditors and would afford reasonable protection to debtors if the period of prescription were reduced.

Septennial Prescription - Cautionary Obligations.

39. We make two major criticisms of this prescription. The first is that it is now of little practical effect. The requirements for its application are so well known to creditors and so easily avoided by framing cautionary documents in the form of joint and several obligations or separate guarantees, that the application of the prescription is habitually excluded. Our examination of the Reports has disclosed no case of importance on the prescription more recent than 1893, which may reflect the fact that techniques of avoidance by creditors have virtually eliminated it as a factor of importance in cautionary transactions. In effect a guarantor remains liable until his obligation is extinguished by the long negative prescription, which seems an unduly lengthy period for an obligation of this character, frequently undertaken without consideration, to subsist. The second criticism is that the prescription commences to run from the date when the guarantee is given instead of the date when the obligation of the guarantor becomes enforceable. If the object of the law of prescription is to cut off the right of a creditor to enforce a claim which, with reasonable diligence, should have been pursued earlier, /

earlier, it follows that an obligation of guarantee, which is initially a contingent obligation, should be affected by prescription only from the time when the principal debtor fails to pay and the guarantor's obligation arises.

40. One effect of the prescription is that creditors will not accept a guarantee in the convenient form of a single deed by the principal debtor incorporating also the obligation of the guarantor. Hence it is usually impracticable to incorporate in one trust deed a debenture by a Scottish company secured over its assets and a guarantee by its subsidiaries with security over their assets, as is normally done in England. The result can be attained by having separate deeds, but this method is less convenient and unfamiliar to English financial institutions who tend to advise instead an issue of unsecured loan stock.

41. We consider that the defects of the existing prescription should be removed by providing for a short prescription applicable to cautionary obligations of all kinds, however constituted, which should run only from the date when the obligation of the cautioner became prestable.

Vicennial Prescription - Holograph Writs.

42. When this vicennial prescription was introduced the period of the long negative prescription was forty years. Since the latter has been reduced to twenty years the vicennial prescription has largely become redundant. The vicennial prescription applies whether interest has been paid or not and it does not run against minors during nonage, but apart from these specialties obligations contained in holograph writings to which the vicennial prescription applies would be cut off with more decisive effect by the long negative prescription. We consider that the continuance of a separate vicennial prescription of holograph writs is no longer necessary.

Existing /

Existing Shorter Prescriptions - The Need for Statutory Restatement.

43. In addition to the particular defects which we have mentioned in paragraphs 33 to 42 there are certain general criticisms applicable to all the existing shorter prescriptions. The law has been developed in a series of unrelated enactments prescribing for different categories of rights and obligations varying periods of prescription having different effects. The relevant statutes have been enacted at various times over several centuries, the most recent of them almost two hundred years ago. From this background certain inevitable disadvantages arise. In particular:-

(1) The terminology of the legislation is archaic or, at least, outmoded and its construction depends on contemporanea expositio, so that the meaning of modern business transactions has to be found in the context of the understanding of the distant past. "It may be unfortunate that the obligations of business men in a commercial community should still depend on the doubtful interpretation of statutes which are three to four hundred years old" (Haydock v. Farguharsons (Aberdeen) Ltd., 1965 S.L.T. 240 at p.242).

(2) The enactment of the law piecemeal in compartments has militated against the development of a comprehensive logical scheme of shorter prescription.

(3) As a result no easily comprehensible general rules of law are available to assist the business man in determining his policy with regard to the timeous enforcement of commercial obligations.

We consider that the law relating to these shorter prescriptions should be re-stated in a comprehensive statute with such amendment and rationalisation as may be thought appropriate.

General Principles of Reform.

44. We consider the principal problems relating to the amendment of the law of the shorter prescriptions under four main headings:-

(1) /

- (1) the scope of the prescription, i.e. the nature of the rights and obligations affected,
- (2) the period of the prescription,
- (3) the effect of the prescription and
- (4) the extension and interruption of the prescriptive period.

The Scope of the Shorter Prescription.

45. We have already noticed the disadvantages of the principle of specifying particular kinds of rights and obligations to which the existing shorter prescriptions apply. In England the Limitation Act 1939 adopts a more comprehensive criterion and applies a statutory limitation of six years upon the time for bringing certain broad categories of actions, principally actions founded on simple contract or tort and actions for an account, with a provision that an action upon a specialty, e.g. on a contract under seal, may be brought within a longer period of twelve years. We favour this broader approach and suggest the introduction of a new uniform shorter prescription on these lines. We exclude at this stage rights and obligations based on delict which would involve an addition to the existing law rather than an amendment of it, and we deal separately with that matter in Head VI infra. We include rights and obligations based on contract and unilateral promise, since in Scotland the latter may create enforceable obligations. We also include rights and obligations of accounting, since many obligations of accounting have a contractual basis, but we should make it clear that the shorter prescription suggested should be applicable to all rights and obligations of accounting whether involving obligations ex contractu or not but excluding accounting for trust funds. Rights and obligations arising under a contract of partnership or agency should be excluded from the new prescription (see paragraph 54 below). As stated above, it is provided in English law that an action upon

a /

specialty may be brought within a longer period of twelve years. We consider that it is desirable that there be a similar provision in Scots law to the effect that certain specified obligations should not be subject to the new prescription, but should be subject to the long negative prescription. How to define those obligations which should be excepted from the application of the new prescription has caused us much difficulty and we would welcome any suggestions concerning this. A suggestion which might be considered would be to use the well known classification of attested and non-attested writs and to state that contracts, promises and obligations of accounting founded on attested writs should be excepted from the new prescription.

46. We have considered the question of whether the scope of the proposed new shorter prescription should embrace also obligations to pay money founded upon unjustified enrichment, e.g. restitution, repetition and recompense or obligations resulting from negotiorum gestio. These obligations arise ex lege in contrast to rights and obligations arising from agreement and promise, and it is arguable that to bring them within the scope of the new shorter prescription would confuse the principle. If, however, these obligations were excluded, and were left to be cut off ultimately by the long negative prescription, much of the purpose of the new shorter prescription would be defeated as after the expiry of the shorter period the creditor might be in a position to found a claim upon recompense. We consider, therefore, that because of these practical considerations such obligations should be brought within the scope of the new shorter prescription.

47. We suggest that the new shorter prescription should apply to all rights and obligations based on contract or promise but only in so far as they involve payment of money. In the case of rights or obligations of which the payment of money forms only part, (e.g. a part exchange transaction) the new shorter prescription would not preclude the right to require performance of any part of the obligation outstanding at the expiry of the prescriptive period other

than the payment of money. The new shorter prescription should also apply to actions founded upon unjustified enrichment, all rights and obligations of accounting and bills of exchange and promissory notes. Rights and obligations of any of the foregoing categories constituted by attested writing should be excepted from the operation of the prescription. The new shorter prescription should also apply to all cautionary obligations however constituted. Rights and obligations of a kind excluded from the operation of the long negative prescription, such as those based on trust, res merae facultatis and real rights in heritable property would normally be excluded from the scope of the new shorter prescription as above defined, but should specifically be excluded from it even where some element of enforceable obligation to pay money was incidentally involved. Rights relating to land would in most cases be automatically excluded from the effect of the shorter prescription by reason of the fact that they are normally constituted by attested writs but there should be a general exclusion of such rights in order to cover those which might be created otherwise, e.g. by holograph writing.

48. We suggest that there should be a special exemption from the shorter prescription in the case of all money transactions between specified classes of relatives, namely, husband and wife and parent and child. These transactions, such as family loans, are frequently not pursued with the same vigilance as in commercial transactions or loans between strangers, and we consider that forbearance to press for repayment within the circle of a family should not result in the loan or other transaction becoming irrecoverable after the expiry of the period of the shorter prescription. We suggest, however, that even within these degrees of relationship, the shorter prescription should apply as from the death of the creditor, or the divorce or judicial separation of the parties when the transaction was between spouses.

49. /

49. We suggest that a shorter prescription on these lines would provide an intelligible guide to persons concerned in contracts and obligations to account. If the character or importance of the transaction were such as to render exclusion of the shorter prescription desirable, the parties would ensure that the transaction was constituted in a manner which would except it from the shorter prescription. For the generality of less important transactions there would soon be a general understanding that rights arising from them had to be pursued within the period of the shorter prescription.

The Period of the Shorter Prescription.

50. We think it would be of advantage if a single uniform period were established for the new shorter prescription. In England the period is six years, but we are aware that suggestions have been made that that period is now unduly long. In the case of commercial contracts the period of six years is out of line with the much shorter periods prescribed by certain Continental systems and the possibility of participation in the Common Market strengthens the case for the adoption of a shorter period. We suggest for consideration that a uniform period of five years is adequate, subject to special provisions as to the effective date of commencement of the period in the case of particular kinds of obligations. In the interests of having a uniform period throughout the United Kingdom, we should hope that the period in England be reduced to five years. In the succeeding paragraphs we examine the probable effect of this suggestion in relation to particular kinds of contractual obligations.

Ordinary Contracts.

51. The general rule should be that the period of prescription commences to run when the right becomes enforceable, i.e. when the obligation /

obligation becomes prestatable and the creditor is entitled to sue. In the case of the types of obligation affected by the existing triennial prescription, house rents (which would now extend also to rents of other subjects), board and lodging, aliment, wages and salaries and accounts for goods supplied retail, our proposal involves an extension of the period under the existing law, but, as we afterwards suggest, the effect of prescription is to cut off the right altogether so that some extension of time may be reasonable.

Continuing Accounts and Long Term Contracts.

52. Special provision would require to be made with regard to the date of commencement of the prescriptive period in the case of continuing accounts and long term contracts, e.g. accounts between merchants, banking and other cash accounts and building or engineering contracts. In the case of continuing accounts we suggest that the terminus a quo prescription should run would be the date of the last item of the account, excluding merely formal entries of charges which do not involve transactions in which the debtor actively participates. As regards long term contracts we suggest that the period of prescription should commence from the date when the last item of the contract becomes due for payment. It would be desirable to define the "last item of account", but in principle it should be the last item relating to a transaction in which both parties actively participated and should exclude items inserted by one party alone without participation by the other. The death or bankruptcy or liquidation of either party should have the effect of terminating the account. In the case of a firm, a change in the personnel of the partners should not have the effect of terminating the account so long as any partner of the former firm continued as a member of the new firm, but the bankruptcy of any partner should have that effect.

Accounts /

Accounts for Professional Services.

53. We suggest that accounts for professional services, including disbursements and outlays incidental to the performance of the services, should be treated as continuing accounts whether they relate to a single transaction or a series of unrelated transactions, i.e. prescription would commence to run from the date of the last item of the account. It would be necessary to define professional services, which term we intend to cover those services provided by such persons as solicitors, accountants, medical practitioners, architects and surveyors. It would also be desirable to define the "last item of account" but in principle it should include any genuine and significant item in respect of service rendered or disbursement or outlay incurred on the direct instructions of the client or in the proper discharge of the adviser's duties in carrying out instructions previously given. The death or bankruptcy or liquidation of either party should have the effect of terminating the account. In the case of a firm a change in the personnel of the partners should not have the effect of terminating the account so long as any partner of the former firm continued as a member of the new firm, but the bankruptcy of any partner should have that effect.

Partnership and Agency.

54. Rights and obligations arising under a contract of partnership or agency should not be subject to the shorter prescription so long as the partnership or agency continued to exist. Upon liquidation of the partnership, or the formation of a new partnership, or upon termination of the agency, rights and obligations arising from the contract should prescribe within five years from the date upon which they became prestable in terms of the dissolution or termination arrangements.

Banking /

Banking Transactions.

55. The legal relationship between banker and customer is that of creditor and debtor, not trustee and beneficiary. Accordingly the shorter prescription should apply to current bank accounts and deposits. At present in Scotland the long negative prescription applies to banking transactions and, whether the bank is debtor or creditor, commences to run from the date of the deposit or advance (Macdonald v. North of Scotland Bank Ltd. 1942 S.C. 369). In England the legal position is different when the bank is debtor and the six years' prescription under the Limitation Act 1939 commences to run against the customer only when repayment is required by him: when the bank is creditor, however, the transaction is in the nature of a loan repayable from the time when it is made and prescription commences to run immediately. We consider that, if the new shorter prescription which we suggest is made applicable to banking transactions, prescription should commence to run (1) in the case of current accounts or deposits where the bank is debtor, from the date when the customer requires payment and (2) in the case of current accounts where the bank is creditor, from the date of the last item of the account other than merely formal entries such as the bank's charge for keeping the account. We think that this suggestion would be consonant with banking principles and would operate fairly in practice. When the bank is debtor it is normally content to allow the balance to remain indefinitely and prescription should commence to run only when the customer seeks payment: it would be hard to justify a depositor's right to require payment being cut off after so short a period as five years. When the bank is creditor it normally regards the advance as a temporary facility made on the understanding of repayment or reduction within a short period, and the overdrawn account is kept under continual surveillance which should not permit it to lie dormant for five years without action being taken to secure a reduction or repayment of the debt.

Guarantees. /

Guarantees.

56. The date when the liability of the guarantor emerges would depend upon the construction of the document of guarantee: the rules suggested below should apply in the absence of express contractual provision. Three cases may be considered:-

(1) Liability of guarantor to creditor. The liability of the guarantor to the creditor arises on default in payment by the principal debtor, i.e. prescription would commence to run in favour of both principal debtor and guarantor at the same time. In the case of a guarantee of a banking account prescription would commence to run against the bank from the date of the last item of the account.

(2) Liability of principal debtor to guarantor. The principal debtor is liable to indemnify the guarantor from the time when the guarantee is given, but prescription of the right to indemnification would only begin to run when the guarantor actually made payment to the creditor. Apart from prescription, of course, the guarantor may require the principal debtor to pay the creditor at an earlier period, even before any demand for payment has been made by the creditor, since he is entitled to relief from his obligation at any stage.

(3) Liability of co-guarantors inter se. The right of a guarantor to recover from his co-guarantors any amount paid by him to the creditor in excess of his pro rata share arises only when he has actually made the payment. Accordingly prescription of his claim to recover the excess from his co-guarantors would commence to run from the time of such payment.

Loans.

57. When the document constituting the loan prescribed a fixed date for repayment, prescription should commence to run as from that date. When no date of repayment was prescribed, prescription should commence /

commence to run as from the date when the loan was made. If the document provided that the loan was repayable on demand, prescription should commence to run from the date when the loan was made. Alternatively in the latter two cases, prescription might commence to run from the date when a demand for repayment was made. We would welcome views as to which of these alternative suggestions is more appropriate.

Bills of Exchange and Promissory Notes.

58. The general principle would remain applicable that the liability of any party to a negotiable instrument depends upon the express terms of the instrument itself, and prescription would run from the stipulated date of payment, irrespective of the time of the acquisition by the holder. In the absence of stipulations to the contrary the following rules should apply:-

(1) Liability of Acceptor. The liability of the acceptor would commence at the time when the instrument matured, unless acceptance was conditional upon presentment for payment when the date of presentment would be the date of commencement of liability. Where the instrument was payable at a fixed period after date or demand or sight, liability would arise only on presentment. Where the instrument was payable on demand, liability would arise on the date of its issue. In the case of bills of exchange where days of grace were allowed, liability would commence only on the expiry of the days of grace. In all these cases the period of prescription would commence to run as from the date when liability arose.

(2) Liability of drawer or indorser. The liability of the drawer or an indorser arises only when the instrument has been presented and dishonoured, and it is suggested that prescription should commence to run in favour of the drawer or an indorser only when he had received notice of dishonour, or, where notice of dishonour /

dishonour was dispensed with, from the date of dishonour. When an instrument was presented and dishonoured, and then re-presented and again dishonoured, prescription would commence to run from the date when he received notice of the first dishonouring.

Payments in respect of Ownership or Occupation of Land.

59. Liability for periodic payments in respect of the ownership or possession of land, (e.g. feu duties, ground annuals, rents or way-leaves,) should prescribe upon the expiry of five years from the date when each payment became due. The expiry of the prescriptive period should not bar actions for recovery of possession of the property on the ground of non-payment, (e.g. irritancies or removings), but it should render incompetent all forms of action designed to recover the payments, e.g. actions of mails and duties or sequestrations for rent or the enforcement of hypothecs.

Effect of the Shorter Prescription.

60. We have pointed out in paragraph 34 that the logical penalty upon a creditor who fails to enforce timeously an obligation to which the shorter prescription applies is that he should either be denied a right of action altogether or that the obligation should be extinguished. If the former alternative is adopted, the right of action is lost but the obligation is not extinguished, and the effect of the prescription is procedural: the creditor may not pursue his right by court action but he may operate any other legal means of enforcing payment, such as security or lien. If the latter alternative is adopted the effect of the prescription would be more than procedural: the obligation would be completely extinguished and any security right ancillary to the obligation would fall with it. This is the present effect of the septennial prescription although not of the other shorter prescriptions of Scots law. The choice between these two alternatives is not easy, and comparison of the solutions /

solutions favoured by other legal systems gives no decisive guidance. We understand that in France and many other European countries the effect of the shorter prescriptions is usually to extinguish the obligation. On the other hand in England and Germany the effect of the shorter prescriptions is merely procedural. We set out in the next three paragraphs the difference in effect of the two alternatives and the principal arguments for and against the adoption of one or other of them.

61. If the effect of the prescription is procedural the result would be that after expiry of the prescriptive period the creditor would have no right to recover the debt by court action or arbitration process nor would he be entitled to plead the debt by way of compensation or as a counter claim, nor to claim it in any process of sequestration or liquidation. The creditor could enforce his claim by any other means not affected by the prescription such as security or lien, except that distraint for payments in respect of the ownership or occupation of land, which may be regarded as a special form of security, would also be incompetent. If the debtor made payment after the expiry of the prescriptive period, he would not be entitled to recover under a condictio indebiti since the obligation still subsisted. On the other hand if the effect of the shorter prescription were to extinguish the right or obligation, not only would all the rights of recovery, claim and counter-claim above-mentioned be lost but the creditor could not enforce his claim by way of security or otherwise since the principal obligation to which they were ancillary had ceased to exist. Even if the debtor paid after expiry of the prescriptive period, he would be entitled to recover the payment by a condictio indebiti.

62. /

62. The principal arguments in favour of adopting a shorter prescription which is procedural in effect are:-

(1) The adoption of the principle of limitation of action rather than extinction of obligation would be consonant with the principles of the law of England and the harmonisation of the Scottish and English systems is a valuable immediate objective. As stated in paragraph 50 above, it is hoped that some progress may also be made to bring the period of the respective shorter prescriptions in the two countries into alignment.

(2) Our suggestions involve both an extension of the scope of the shorter prescription and, in the case of some kinds of obligation, a reduction in its period. In these circumstances the enlargement of its effect to extinguish the obligation completely might well be too drastic a reform.

(3) There may be many cases where a creditor is content to rely upon adequate security without involving the debtor in the cost of litigation or in sequestration. The object of prescription is to protect the debtor against old claims, not to accelerate his financial embarrassment.

63. The main arguments in favour of making the shorter prescription extinctive of the obligation are:-

(1) To treat prescription as extinguishing obligations would be more in consonance with the general philosophy of Scots law, where procedural rules are normally the handmaid of substantive law rather than a mode of expressing it.

(2) The procedural alternative has manifest disadvantages from the point of view of the debtor and his cautioners, since:-

(i) /

- (i) The debtor would not be entirely freed from his debt until the expiry of the period of the long negative prescription.
 - (ii) The present rule is that cautionary obligations are cut off completely by the septennial prescription. The substitution of limitation of the right of action might expose the cautioner after the lapse of the period of prescription to manoeuvres on the part of creditors to secure payment of the sum due by him as obligant.
 - (iii) The debtor always would be exposed to the risk of actions abroad, and that even in systems with the same or a shorter period of prescription. Most foreign systems regard prescription as pertaining to substance rather than procedure. They will not apply our rules because they are procedural, and they will not apply their own because - if the proper law of the transaction is Scots law - Scots substantive law applies.
- (3) To make the shorter prescription extinctive of the obligation would simplify the statement of the law. If it is considered that the right of the creditor to enforce payment by utilising collateral rights of security should continue despite the expiry of the period of prescription, we consider that it would be practicable to provide that collateral rights should not prescribe although we realise that this would be inconsistent with the general principle.

64. Although the difference in principle between the two alternative effects of prescription is material, the practical results of adopting one or other of them would be little different. We have reached no concluded view on the matter but in dealing with the suggestions as to extension and interruption of prescription and in formulating proposals for reform we have adopted the extinctive alternative and have provided that collateral rights should not prescribe. It would not be difficult, however, to make appropriate amendments if the procedural alternative should ultimately be preferred. A contributory factor in our deciding to formulate our proposals based on the extinctive alternative is the fact that the Law Reform Commission of New South Wales in its first report on the Limitation of Actions issued in October, 1967, decided in favour of the extinctive alternative although their law has up to now been based on the English Limitation Act which adopts the procedural alternative. We would welcome views as to which of the alternatives is considered preferable.

Extension and Interruption of the Prescription

Court Action

65. We suggest that the running of the proposed shorter prescription should be interrupted by founding on the right or document in any competent judicial process during the prescriptive period, even if that process is not completed or pursued to an effective conclusion. Founding upon the right or document would include (1) founding upon it by way of counter-claim in a judicial process, (2) founding upon it in a claim in a process of multiple-pounding or ranking and sale, and (3) founding upon it in presenting or concurring in a petition for sequestration or liquidation of the debtor. For this purpose judicial process would include any competent arbitration proceedings. The effect of such interruption should be that the period of the prescription would commence to run anew as from the date of the interruption.

Disability

66. The present law adopts no clear policy in relation to the disability of the creditor. Minority affects the running of the quinquennial and sexennial prescriptions but does not affect that of the triennial and septennial prescriptions. We consider that minority or less age or legal disability should, in accordance with English practice, affect the new shorter prescription which we suggest.

67. We consider that a creditor should not be required to initiate a judicial process if the debtor is willing to make a written acknowledgment of the debt. It would be necessary, however, to prescribe the kind of writing which would be sufficient. We suggest that the writing should acknowledge in clear terms that the right or claim is renewed as of the date of the document, that it should be granted by the debtor or an agent of the debtor duly authorised to do so and that it should be made to the creditor or his accredited agent. In the case of a bill of exchange or promissory note, the acknowledgment should comply with the requirements of law for a document of that kind, i.e. a fresh bill or promissory note would be granted. In the case of a guarantee it should be such an acknowledgment as would, when read along with the guarantee, amount to a renewal of it. The effect of any such writing should be to renew the obligation as from its date and the prescription would run anew from that date. An acknowledgment of a pecuniary debt or liquid amount should bind the person making the acknowledgment and his successors, but not any other person, e.g. a co-obligant.

Payment to Account of Principal or Interest

68. We consider that, when the claim is for a pecuniary debt or liquid amount, any payment by the debtor to account of principal or interest should have the effect of extending the period of prescription /

prescription so that prescription commences to run from the date of the payment. If a partial payment is made to account of any periodic payment such as rent or interest, the effect should be to extend the period of prescription quoad the principal but not quoad the unpaid balance of the periodic payment concerned. A payment made to account of a pecuniary debt or liquid amount by one of several co-obligants should bind all other co-obligants.

Fraud, Concealment and Error

69. It is a defence to the existing triennial prescription that the creditor has been induced by the action of the debtor to refrain from pursuing the claim within the prescriptive period. We consider that on equitable grounds a defence against the suggested new shorter prescription should similarly be available to the creditor if he has been deterred from taking action within the prescriptive period by fraud or concealment by the debtor or by error on the part of the creditor but only where such error has been induced by the words or conduct of the debtor. For the purposes of such a defence the actions of any person through whom the creditor or debtor claimed or from whom the creditor or debtor derived right should be regarded as actions of the creditor or debtor respectively and the actions of an agent for either party should be regarded as the actions of his principal. The effect of such fraud, concealment or error should be to defer the commencement of running of the prescription until the date when the fraud, concealment or error was discovered by the creditor or could, with reasonable diligence on his part, have been discovered.

IV. QUINQUENNIAL /

IV QUINQUENNIAL PRESCRIPTION OF DILIGENCES
RELATING TO HERITABLE PROPERTY

Existing Law

70. The combined effect of provisions contained in the Bankruptcy (Scotland) Act 1913 and the Conveyancing (Scotland) Act 1924 is that all forms of diligence which render land, leases and heritable securities litigious prescribe after the expiration of five years from their effective date. Inhibitions, notices of litigiosity in adjudications and abbreviates of sequestration are the principal forms of diligence affected. After the expiration of the prescriptive period the diligence ceases to have effect. New letters of inhibition can be taken out, however, which are effective for a period of five years. In bankruptcy the trustees must, if the sequestration is continuing, record before the end of the period of five years a memorandum which is effective for another five years.

Criticisms and Suggestions

71. The object of these comparatively modern statutory provisions is to ensure that a search in the Register of Inhibitions and Adjudications for a period of five years prior to the date of a transaction affecting heritable property will disclose any diligences which are still effective. The provisions operate satisfactorily in practice and it is convenient to retain these provisions in the statutes in which they at present appear as part of a logical conveyancing scheme.

V LIMITATION /

V LIMITATION OF ACTIONS FOR DAMAGES
IN RESPECT OF PERSONAL INJURIES

72. Many statutes contain provisions regarding the limitation of civil actions in specific instances, but these provisions are for the most part of little general importance. There is, however, one statutory limitation of actions which is of more general significance, and which restricts the period within which actions of damages arising out of personal injuries may be brought.

Existing Law

73. (1) The basic statutory provisions are contained in the Law Reform (Limitation of Actions etc.) Act 1954 s. 6 as amended by the Limitation Act 1963 ss. 8, 9 and 13. The limitation applies to all actions of damages where the damages claimed consist of or include damages or solatium in respect of personal injuries. The limitation, therefore, does not apply to actions of damages for breach of contract (unless involving personal injuries) nor to actions of damages ex delicto where there is no element of claim for personal injuries.

(2) The period of the limitation is, except as hereinafter mentioned, three years. The point of time from which the limitation period begins to run depends on the circumstances of the case. Where the action is brought by or on behalf of a person in respect of injuries sustained by that person the period runs from the date when the injuries were sustained. Where the act, neglect or default giving rise to the action is a continuing one, the period runs from the date when the act, neglect or default ceased. Where an action is brought by or on behalf of a person to whom a right of action has accrued on the death of another person in consequence of injuries sustained by that other person, the period runs from the date of death. Where the person to whom a right of action accrues is under legal disability by reason of pupillarity or minority or of unsoundness of mind

and is not in the custody of a parent, the period begins to run from the date when the person ceases to be under such disability. The three year period, however, does not apply if it is proved that the "material facts" relating to the action were at all times outside the knowledge (actual or constructive) of the pursuer until a date either after the end of the three year period or not earlier than twelve months before the end of the period. In these circumstances an action can be brought provided it is commenced within twelve months of the date when the facts came to the pursuer's knowledge. Furthermore, if an injured person, as a result of his injuries, dies more than three years after the date on which the injuries were sustained an action may be brought provided that it is brought within twelve months of the death of the deceased and also that the "material facts" were at all times until his death outwith the knowledge of the deceased or that they did not come to his knowledge until a date which was after, or within twelve months before, the expiry of the three year period and which was also not earlier than twelve months before the date on which the action was brought.

(3) The effect of the limitation is that if an action for the damages specified above is not commenced within the prescriptive period then such action is barred. Further, when the action is commenced after the expiry of the three year period due to the "material facts" not being known in time, the action will be tried by a judge alone and not by a judge and jury.

(4) The only way in which the limitation period can be interrupted is to commence the action, the date of commencement being the date when service has been effected by a proper citation. Further, commencement of the action against one defender is not held to be sufficient to commence it against all other possible defenders on whom service must be effected by a proper citation within the limitation period to prevent the action against them being barred.

Criticisms and Suggestions

74. Certain criticisms have been made to us of the limitation imposed by the 1954 Act as amended by the 1963 Act and of its interpretation by the courts. Briefly, these criticisms are to the effect that the general principle of law should be against limiting the right of a person to seek redress for injury due to the negligence of another person and that the statutes have now served their purpose of clearing away a backlog of stale claims. Further criticisms of the 1954 Act are principally of its drafting, e.g.;

- (1) The purpose of the proviso to section 6(1)(b) of the Act is rather obscure. If the function of the proviso is merely to reaffirm, in their application to limitation of actions, the common law rules relating to survival of rights of action on death, then the proviso seems unnecessary. If its function is rather to make it clear that the limitation of actions specified in section 6(1)(a) applies to the deceased's right of action so as to bar the dependant's claim if the deceased's own action was time-barred before his death, then the provision is not expressed in a helpful way;
- (2) Section 6(2) of the Act is defective because it does not cater for the case where there is supervening unsoundness of mind on the part of the person to whom the right of action accrued; and
- (3) The Act has to be construed along with the amendments in the 1963 Act and section 9 of that Act is extremely tortuous in expression.

As regards the interpretation by the courts it was suggested that -

- (i) the statutory provisions could have been interpreted more liberally by the courts in permitting amendments after the expiry of the period of limitation in actions raised within the period, and

(ii) there are a number of hard cases involving progressive disabling diseases which have been barred by the statutes because the injured person did not appreciate soon enough the possible effects of an accident which at the time seemed unlikely to have serious results upon his health. In this respect the provision in the 1963 Act to the effect that the action must be commenced within one year after the discovery of a latent but progressive industrial disease, has been criticised on the ground that the period is too short.

75. We do not agree with the principle stated that a person injured by the negligence of another should be able to defer an action of damages for a lengthy period. We think it is now accepted that the person responsible should not be required to defend an action long after the event which occasioned the claim, when recovery of evidence is much more difficult. Nor do we consider that the statutes were intended to fulfil a temporary purpose, but rather to impose a limitation, which would ensure that claims of this kind are brought timeously. We consider that the criticisms of the drafting of the 1954 Act and of the fact that action must be taken within one year after the discovery of a latent but progressive industrial disease are valid, but our impression is that they are not sufficiently important to require amendment of the law on this matter. We would, however, welcome views on this subject. As regards the interpretation of the statutes by the courts, we consider that the criticisms are not of real substance. In Pompa's Trustees v. Edinburgh Magistrates 1942 S.C. 119, it was stated that "the Court will not in general allow a pursuer by amendment to substitute the right defender for the wrong defender, or to cure a radical incompetence in his action, or to change the basis of his case if he seeks to make such amendments only after the expiry of a time limit which would have prevented him at that stage from raising proceedings afresh". Following this dictum, the court in Miller v. National Coal Board 1960 S.C. 376

refused leave to the pursuer to introduce additional defenders and in Dryburgh v. National Coal Board 1962 S.C. 485 the court refused the pursuers leave to substitute an entirely new ground of fault. In both these cases the court considered that the amendments were such as, in effect, to constitute an entirely new action. The court is, however, prepared to admit alteration of the pleadings after the expiry of the statutory period where the alterations cannot be held to constitute a new action (see Coyle v. National Coal Board 1959 S.L.T. 114; McCluskie v. National Coal Board 1961 S.C. 87; O'Hare's Executrix v. Western Heritable Investment Co. Ltd. 1965 S.C. 97; and Mowatt v. Shore Porters Society 1965 S.L.T. (Notes) 10).

76. Our general conclusion is that there are not sufficient grounds for amendment of the law on this matter, but it would be of advantage if the relevant provisions were re-stated and re-enacted in a Scottish statute dealing comprehensively with prescription and limitation of actions.

VI. RIGHTS /

VI RIGHTS AND OBLIGATIONS BASED ON DELICT

Existing Law

77. In Scotland actions founded on delict (other than delict causing personal injury) may be brought at any time within the period of the long negative prescription, although in particular circumstances delay may result in proof rather than jury trial.

Criticisms and Suggestions

78. In England actions founded on tort (other than an action of damages for personal injury) are affected by the Limitation Act 1939 and may not be brought after the expiration of six years from the date on which the cause of action accrued. A survey of the various categories of delicts (conveniently summarised in the index to contents in Walker, Delict I: ix - xiv) leads to the conclusion that in general there is no reason why the pursuer of an action based on delict should not be required to commence it within a reasonably short time after the occurrence of the delict. A period of twenty years seems unduly long for a person to remain under the threat of an action of reparation in respect of, say, defamation or slander or professional negligence.

Nature, Effect and Period of the Prescription

79. Consistent with our proposal that the effect of the new shorter prescription should be to extinguish the rights or obligations affected we suggest that rights and obligations based on delict (other than rights and obligations for damages for personal injury) should be extinguished after the expiration of five years from the date of the delict.

80. The point of time from which the prescription begins to run would depend on the circumstances of the case. The general rule should be that the period of prescription commences to run when the right becomes enforceable, i.e., when the damage is, or could reasonably have been, ascertained by the aggrieved party. Where

the act, neglect or default giving rise to the delict is a continuing one, the period should run from the date when the act, neglect or default ceased, but if the damage caused by said act, neglect or default is not immediately ascertainable then the period should run from the date when the damage is, or could reasonably have been, ascertained by the aggrieved party.

Extension and Interruption of the Prescription

Court Action

81. We suggest that the running of this proposed prescription should be interrupted by founding on the right or obligation in any competent judicial process during the prescriptive period, even if that process is not completed or pursued to an effective conclusion. Founding upon the right or obligation would include (1) founding upon it by way of counter-claim in a judicial process and (2) founding upon it in presenting or concurring in a petition for sequestration or liquidation of the person liable in delict. For this purpose judicial process would include any competent arbitration proceedings. The effect of such interruption should be that the period of the prescription would commence to run anew as from the date of the interruption.

Disability

82. We consider that the period of prescription should be extended by the period of minority or less age or legal disability of the original aggrieved party.

83. We also consider that an aggrieved party should not be required to initiate a judicial process against any person liable in delict who is willing to make a written acknowledgment of his liability. It would be necessary, however, to prescribe the kind of writing which would be sufficient. We suggest that the writing should acknowledge in clear terms that the right is renewed as of the date of the document, that it should be granted by the person liable in delict or his agent duly authorised to do so and that it should be made to the aggrieved party or his accredited agent.

Fraud, Concealment and Error

84. We consider that on equitable grounds a defence against this prescription should be available to the aggrieved party if he has been deterred from taking action within the prescriptive period by fraud or concealment by the person liable in delict or by error on the part of the aggrieved party but only where such error has been induced by the words or conduct of the person liable in delict. For the purposes of such a defence the actions of any person through whom the aggrieved party claimed or from whom the aggrieved party derived right should be regarded as actions of the aggrieved party and the actions of the agent for either the aggrieved party or the person liable in delict should be regarded as actions of his principal. The effect of such fraud, concealment or error should be to defer the commencement of running of the prescription until the date when the fraud, concealment or error was discovered by the aggrieved party or could, with reasonable diligence on his part, have been discovered.

VII RIGHTS /

VII RIGHTS AND OBLIGATIONS IN RESPECT OF
TRUST PROPERTY OR THE ESTATES OF DECEASED
PERSONS

Trust Property

85. In Scots law the long negative prescription does not bar an action by a beneficiary for accounting for trust funds and the positive prescription does not prevent challenge of a title to trust property which has been acquired in breach of trust. On the other hand, a claim by a beneficiary for loss of trust funds caused by ultra vires acts of the trustees is cut off by the long negative prescription and so is a claim by a legatee against an executor.

86. In English law the Limitation Act 1939 does not bar actions based on fraudulent breach of trust nor actions for recovery of trust property in possession of the trustee or received by the trustee and converted to his use. But actions for ultra vires acts of trustees or negligence in managing trust investments or payments to the wrong persons, so long as no question of fraud is involved, are subject to the limitation of six years, and, subject to the right to recover trust property received and converted by the trustee, the claim of a beneficiary to a share in the trust estate cannot be brought after six years.

87. There is little essential difference between the laws of Scotland and England, but it would probably be desirable that a new statute on prescription should be made comprehensive by incorporating the present law in statutory form. The main provisions would be:-

(1) Prescription would not affect - (i) a claim to accounting for trust funds which were in the possession of the trustee, nor (ii) recovery of trust funds which the trustee had in breach of trust appropriated to his own use, nor (iii) recovery of trust funds which the trustee had fraudulently, but not merely in honest error, conveyed to a third party. In such cases prescription would not avail whether the claim was against the trustee or any other person who had received the trust funds.

(2) The long negative prescription would apply to - (i) claims against a trustee in respect of loss caused by ultra vires or negligent acts, and (ii) claims for recovery of trust funds paid or overpaid to a third party by the trustee in error, provided no fraud was involved. The prescription would commence to run from the date of the ultra vires or negligent act or the wrongful payment or overpayment, except in circumstances in which the right of the claimant had not vested when it would run from the date of vesting of the right.

Interests in the Estates of Deceased Persons

88. In Scots law the position is:-

(1) Creditors The executor cannot be compelled to pay any creditors until after the expiry of six months from the death. After the expiry of the six months the executor may proceed to pay the creditors and is not answerable for so doing to creditors who claim later although such late claimants are entitled to participate in the division of any funds remaining in the executor's hands. Such claims may, however, be pursued against the beneficiaries subject to any of the short prescriptions which may affect them and subject ultimately to the long negative prescription.

(2) Legal Rights Claims of jus relictii or jus relictiae and legitim are cut off by the long negative prescription.

(3) Persons entitled to Succeed or Legatees Subject to the qualification that trust funds may be recovered, without limit of time, if they are still in the possession of the executor or have been received by him and converted to his own use, the claims of persons entitled to succeed or legatees are cut off by the long negative prescription.

(4) Prior Rights The position of claims to prior rights by the spouse of the deceased person under the Succession (Scotland) Act 1964 is not clear. Since, however, they are first in ranking order, prior to legal rights, it is suggested that they should be

similarly treated quoad prescription, i.e. they would be lost if not claimed within twenty years.

89. In English law the position is that, subject to the right to recover, without limit of time, trust funds in the possession of an executor or converted to his use, a claim to the personal estate of a deceased person or any part thereof must be brought within twelve years of the date when the right to receive the estate or share accrued. No action to recover arrears of interest on a legacy may be brought after six years from the date when the interest becomes due.

90. Again it is suggested that the existing Scots law as outlined in paragraph 88 should be included in a new statute on prescription, and that claims to prior rights should be treated quoad prescription in the same way as legal rights.

VIII COMPUTATION /

VIII COMPUTATION OF PRESCRIPTIVE PERIODS

91. The Committee of Experts of the Council of Europe has considered how prescriptive periods should be calculated. We consider it desirable that there should be a clear statement applicable to all kinds of prescription, of the method of computation of prescriptive periods. The rules which we propose below follow those provisionally proposed by the Committee of Experts.

92. Our proposed rules are:-

- (1) The rules apply to all prescriptive periods.
- (2) The day in the course of which the prescriptive period begins is not included in that period, but the day in the course of which it expires is included.
- (3) A day is taken to run from the midnight immediately after which it begins to the midnight at which it ends.
- (4) A year is a calendar year of 365 or, in a leap year, 366 days.

93. The Committee of Experts provisionally proposed a rule to the effect that, when a prescriptive period is due to end on a Saturday, a Sunday or an "official holiday", the prescriptive period should be extended to the next working day thereafter. What is meant by an "official holiday" is perhaps best explained by the use in England of the expression "bank holiday", which is understood to mean what is virtually a general public holiday applicable throughout England and Wales. New Year's Day and, to an increasing extent, Christmas Day appear to be the nearest Scottish equivalent. Comments are invited on whether the provisional rule proposed by the Committee of Experts would be a useful addition to the law of Scotland.

IX PROVISIONAL /

IX PROVISIONAL PROPOSALS

94. We summarise our provisional proposals as follows:-

Positive Prescription

Notices of Title and Notarial Instruments. (para. 17)

(1) A notice of title or notarial instrument duly recorded should be accepted as a sufficient foundation for a prescriptive title without production of the warrants upon which it proceeded.

Period - Heritable Rights. (para. 18)

(2) The period of positive prescription should be reduced to ten years and that period should apply not only where the foundation writ is an absolute title but also where it is a registered leasehold title.

(3) The amending provision should not be pleadable in any action in dependence when the amending legislation comes into force or commenced before two years thereafter.

Period - Servitudes, Rights of Way and other Public Rights. (para. 19)

(4) The period of possession, use or enjoyment necessary to constitute or prove the existence of any servitude or public right of way or other public right should be reduced from forty years to twenty years.

(5) The amending provision should not be pleadable in any action in dependence when the statute comes into force or commenced before five years thereafter.

Nonage and Disability. (paras. 14 and 19)

(6) In the computation of the period of positive prescription in all cases, no deduction or allowance should be made on account of the years of minority or less age of those against whom the prescription is used and objected or of any period during which any such person was under legal disability.

Long Negative Prescription

Period - Heritable Rights. (para. 23)

(7) The period of negative prescription should not be reduced to less than twenty years.

Period /

Period - Servitudes, Rights of Way and other Public Rights. (para. 25)

(8) The period of disuse necessary to involve the extinction of any servitude, right of way or other public right should be reduced from forty years to twenty years.

(9) The amending provision should not be pleadable in any action in dependence when the statute comes into force or commenced before five years thereafter.

Nonage and Disability. (para. 25)

(10) In the computation of the period of negative prescription necessary to extinguish any servitude, right of way or other public right, no deduction or allowance should be made on account of the years of minority or less age of those against whom the prescription is used and objected or of any period during which any such person was under legal disability.

Shorter Negative PrescriptionsRepeal of Existing Statutes. (para. 43)

(11) The existing statutes relating to the triennial, quinquennial, sexennial and septennial prescriptions should be repealed.

New Shorter Prescription. (paras. 44 - 69)

(12) A new short prescription of five years should be introduced on the following lines:-

Nature of the Rights, Obligations and Documents Affected

(i) All rights and obligations based on contract, promise or unjustified enrichment to the extent to which they involve payment of money, other than (a) a debt constituted by attested writing and (b) an obligation relating to land or heritable securities and (c) collateral rights in security of a principal obligation, should be extinguished after the expiration of five years from the date when the right or obligation became prestable subject to the special provisions following:

Provided /

Provided that:-

(a) In any contract or promise whereby several amounts are payable in respect of a single transaction or whereby sums are payable by instalments the right should be deemed for the purposes of the prescription to have become prestable as regards all amounts or instalments on the date when the last amount or instalment became due.

(b) In any right or obligation based upon a bill of exchange or promissory note, other than a banknote, the right or obligation should be deemed to have become prestable against the acceptor on the date on which the sum due under the bill of exchange or promissory note became payable and against the drawer or an endorser on the date when he received notice that the bill of exchange or promissory note had been dishonoured. The prescription should not apply to a banknote.

(c) In the case of rights and obligations based on cautionary obligations,

(i) cautionary obligations should be subject to the shorter prescription notwithstanding that they have been constituted by attested writings,

(ii) for the purpose of the prescription a cautionary obligation should include any transaction by which one or more persons made himself or themselves cautioners or guarantors for another and, where more than one person was bound in any document as principal, any of such persons would be deemed a cautioner unless the creditor established that such person had received money or credit in reliance on the document; and

(iii) the right should be deemed to have become prestable as regards the obligation of the cautioner upon default by the principal debtor, and, as regards the /

the obligation of relief by the principal debtor or a co-cautioner upon payment being made to the creditor by the cautioner.

(d) Notwithstanding the exclusion of rights or obligations founded on contracts or promises relating to land or heritable securities, the right to payment of (i) arrears of feu-duty, ground annual, rent, wayleave or other payment in respect of the use or occupation of land, (ii) arrears of interest upon a heritable security, or (iii) damages in respect of non-payment of any such arrears should be extinguished after the expiration of five years from the date when such payment became due.

(e) The right or obligation should not be extinguished where the payment of money is due by the husband, wife, parent or child of the creditor, but should be extinguished in such cases after the expiration of five years from the death of the creditor or debtor or, where the money was due by one spouse to the other, from the divorce or judicial separation of the spouses.

(ii) All rights and obligations of accounting, whether based on contract or otherwise, including rights and obligations in respect of goods supplied on trading accounts and in respect of professional services, but excluding rights and obligations for accounting for or recovery of funds held in trust and obligations arising under a subsisting contract or relationship of partnership or agency, should be extinguished after the expiration of five years from the date of the last item of the account. The last item of account would be either (a) the last item relating to a transaction in which both parties actively participated and would exclude items inserted by one party alone without participation by the others or (b) any genuine and significant item in respect of /

of service rendered, or disbursement or outlay incurred on the direct instructions of the client or in the proper discharge of the adviser's duties in carrying out instructions previously given. The death or bankruptcy or liquidation of a party to the account should terminate the account. In the case of a firm a change in the personnel of the parties should not terminate the account so long as any partner of the former firm continued to be a member of the new firm, but the bankruptcy of any partner should terminate the account.

Nature and Effect of the Prescription

(iii) The prescription should extinguish all rights and obligations of the kinds specified above after the expiration of the five year period.

Interruption and Extension of the Prescription

(iv) The prescription should be interrupted by the creditor founding on the right, obligation or document in any competent judicial or arbitration process. If such process were not pursued to final decree or award, prescription would begin to run afresh from the date of commencement of the process. If final decree or award were pronounced no action or diligence to enforce it would be competent after the expiration of five years from the date of the decree or award.

(v) The period of prescription should be extended by the period of minority or less age or legal disability of the original creditor.

(vi) Where any right or obligation to which the short prescription applied related to a pecuniary debt or liquid amount and the debtor acknowledged the right, the prescription should commence to run afresh as from the date of the acknowledgement.

Provided that:-

(a) Any such acknowledgement should be in writing and signed by the debtor or any person having authority,

general or special, to do so on behalf of the debtor.

(b) Any such acknowledgement should be made to the creditor or any person having authority, general or special, to act for the creditor in the matter.

(c) Where the right or obligation related to a bill of exchange or promissory note, the acknowledgement should be in the form of a new bill of exchange or promissory note.

(d) Where the right or obligation related to a guarantee or cautionary obligation the acknowledgement should be in the form of either a new guarantee or cautionary obligation or a writing supplementary to the existing guarantee or cautionary obligation which, when read along with it, would constitute a renewal of it.

(e) An acknowledgement of any pecuniary debt or liquid amount should bind the person making the acknowledgement and any person deriving right through him subsequent to the date of acknowledgement but not any other person.

(vii) Where any right or obligation to which the short prescription applied related to a pecuniary debt or liquid amount and the debtor had made any payment of principal or interest in respect of it, the period of prescription should commence to run afresh as from the date of the payment.

Provided that:-

(a) A payment of part of an instalment of interest or part of any feu-duty, ground annual, rent, wayleave or other payment in respect of the use or occupation of land should not extend the period for claiming the remainder then due.

(b) A payment made in respect of any pecuniary debt or liquid amount should affect the rights and obligations of all persons liable in respect of it.

(viii) Where, in the case of any right or obligation to which the short prescription applied, the creditor had refrained from pursuing his right because of:-

- (a) the fraud of the defender, or
- (b) the right having been concealed by the fraud of the defender, or
- (c) there having been mistake or misunderstanding on the part of the pursuer sufficient to establish a plea of error which had been induced by the words or conduct of the defender,

the prescription should not commence to run until the pursuer had discovered the fraud, concealment or error, as the case might be, or could with reasonable diligence have discovered it. For the purposes of this provision any words, conduct or action by or to a person through whom the pursuer or defender claimed or an agent of the pursuer or defender should be equivalent to those of the pursuer or defender respectively.

Provided that the foregoing should not enable any action to be brought to recover, or enforce any charge against, or set aside any transaction affecting, any property which:-

- (i) in the case of fraud, had been purchased for value by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed, or
- (ii) in the case of error, had been purchased for value, after the transaction in which the error was made, by a person who did not know or have reason to believe that the error had been made.

(ix) In any action or arbitration in which the short prescription is pleaded the court or arbiter should have power to reject the plea if the delay in commencing proceedings had been induced by the conduct of the defender or his agent or any

person from whom the defender derived right or the agent of such person and the court or arbiter was of opinion that it would be inequitable to allow prescription to be pleaded.

Quinquennial Prescription of Diligences
Relating to Heritable Property

(13) No change in the existing law is proposed. (para. 71)

Limitation of Action for Damages in
Respect of Personal Injuries

(14) No change in the existing law is proposed, but the relevant provisions should be re-stated and re-enacted in a comprehensive Scottish statute. (para. 76)

Rights and Obligations based on Delict

Prescription of Rights and Obligations based on Delict. (paras. 78-84)

(15) A new short prescription of five years should be introduced on the following lines:-

Nature of the Rights and Obligations Affected

(i) Rights and obligations based on delict other than an action in respect of personal injuries to which the Law Reform (Limitation of Actions etc.) Act 1954 as amended by the Limitation Act 1963 already applies, should be extinguished after the expiration of five years from the date when the right or obligation became prestable. Provided that where the act, neglect or default giving rise to the delict is a continuing one, the period should run from the date when the act, neglect or default ceased or in the event of the damage not being immediately ascertainable, from the date when the damage is, or could reasonably have been, ascertained by the aggrieved party.

Nature and Effect of the Prescription

(ii) The prescription should extinguish all rights and obligations of the kind specified above after the expiration of the five year period.

Interruption and extension of the Prescription

(iii) The prescription should be interrupted by the aggrieved

party founding on the right or obligation in any competent judicial or arbitration process. If such process were not pursued to final decree or award, prescription would begin to run afresh from the date of commencement of the process. If final decree or award were pronounced no action or diligence to enforce it would be competent after the expiration of five years from the date of the decree or award.

(iv) The period of prescription should be extended by the period of minority or less age or legal disability of the original aggrieved party.

(v) Where the person liable in delict acknowledged the right of the aggrieved party, the prescription should commence to run afresh as from the date of the acknowledgment.

Provided that:-

(a) any such acknowledgment should be in writing and signed by the person liable in delict or any person having authority, general or special, to do so on his behalf.

(b) any such acknowledgment should be made to the aggrieved party or any person having authority, general or special, to act for him in the matter.

(vi) Where in the case of any right or obligation to which the prescription applied the aggrieved party had refrained from pursuing his right because of:-

(a) the fraud of the person liable in delict, or

(b) the right having been concealed by the fraud of the person liable in delict, or

(c) there having been mistake or misunderstanding on the part of the aggrieved party sufficient to establish a plea of error which had been induced by the words or conduct of the person liable in delict

the prescription should not commence to run until the aggrieved party had discovered the fraud, concealment or error, as the case might be, or could with reasonable diligence have discovered it. For the purposes of this provision any words, conduct or action by any person through whom the aggrieved party claimed or from whom the aggrieved party derived right should be equivalent to those of the aggrieved party and any words, conduct or action by any agent for either the aggrieved party or the person liable in delict should be equivalent to those of his principal.

(vii) In any action or arbitration in which the prescription is pleaded the court or arbiter should have power to reject the plea if the delay in commencing proceedings had been induced by the conduct of the person liable in delict or his agent and the court or arbiter was of opinion that it would be inequitable to allow prescription to be pleaded.

Rights and Obligations in Respect of Trust
Property or the Estates of Deceased Persons

(16) No change in the existing law is proposed but it should be made clear that claims to prior rights on intestacy should be extinguished by the long negative prescription. (para. 90).

Computation of Prescriptive Periods

(17) In the computation of any period of prescription or limitation, the day in the course of which the period begins should not be included but the day in the course of which it expires should be included, and in either case the day would run from midnight to midnight. (para. 92).

X PROGRAMME /

X. PROGRAMME OF LEGISLATION.

95. The Halliday Committee recommended that the shortening of the period of the positive prescription relating to heritable rights and the shortening of the periods of the positive and negative prescriptions relating to servitudes, rights of way and other public rights be effected speedily in order to secure quickly economies in conveyancing costs. We agree that this can be done most expeditiously by amendment of the relevant provisions of the Conveyancing Acts.

96. We favour the view that the whole general law of prescription and limitation of actions should thereafter be incorporated in a comprehensive statute which would include:-

- (1) positive prescription;
- (2) long negative prescription;
- (3) the new shorter prescription, applicable to rights and obligations based on contract, promise or unjustified enrichment and actions of accounting;
- (4) the new shorter prescription of five years in respect of rights and obligations based on delict (other than rights and obligations for damages for personal injury); and
- (5) the existing limitation of actions for damages in respect of personal injuries.

This statute would to a considerable extent be a consolidating Act but would also contain important amendments, particularly with regard to the suggested new shorter prescription.

97. This Memorandum deals only with the more important prescriptions and limitations. There are many others, either enacted in special prescription statutes (e.g. the vicennial prescription of retours and services and the decennial prescription of the accounts of tutors and curators) or embodied incidentally in statutes /

statutes (e.g. the five year limitation of actions of reduction of sales under powers contained in bonds and dispositions in security contained in the Conveyancing (Scotland) Act 1924 s. 41). We suggest that, when the suggested new statute is being framed, a survey be made of these other prescriptions and limitations with a view to (1) repealing those which are obsolete, (2) incorporating in the new statute those which can appropriately be fitted into the new pattern of the long negative prescription and the shorter prescription or can be made the subject of general provision, or (3) leaving the remainder as incidental provisions in the statutes in which they at present occur. In the course of examining this aspect of the matter, we have compiled a list of these statutory time-limits. As this may be of some interest we annex it as Appendix B while pointing out that we lay no claim to its being comprehensive. We shall be glad to have any omission from the list brought to our attention.

APPENDIX A

NOTE ON PROOF BY WRIT OR OATH

General

1. The vicennial prescription of holograph writs, the sexennial prescription of bills of exchange and promissory notes, the quinquennial prescription and the triennial prescription do not extinguish an obligation or make it unenforceable, but, after a certain lapse of time, limit or restrict the mode of proving it. When these prescriptions apply, they result in a restriction of proof, in the case of holograph writs, to the oath of the party against whom the claim is made, and, in the case of the other prescriptions mentioned, to his writ or oath.

2. If a defender wishes to found upon one of these prescriptions he must state a plea to that effect in his defences, which the court should normally either sustain or repel before proof is allowed. The court's decision is arrived at upon a consideration of the pursuer's averments, and of the terms of the account or other document sued upon (Alcock v. Easson 1842 5 D. 356, L.J.-Cl. Hope at p. 363) but on a few occasions a preliminary proof has been allowed in order to determine whether or not a prescription applies (e.g. McKinlay v. Wilson 1885 13 R. 210). Unless the plea of prescription has been repelled, proof prout de jure on the merits of the action ought not to be allowed (Alcock v. Easson supra L.J.-Cl. Hope at pp. 363-4). If, however, such a proof is allowed and acquiesced in, it is too late for the defender to raise the plea later, and the court must then decide the case on the evidence led, even if the proof ought to have been restricted to writ or oath (Wyse v. Wyse 1847 9 D. 1405).

3. The presenting, or concurring in, a petition for sequestration, or the lodging of a claim in a sequestration, interrupts prescription of the debt founded upon (Bankruptcy (Scotland) Act 1913 s. 105).

Proof /

Proof of Prescribed Writs and Obligations

4. When prescription is held to apply, it is not necessary that the creditor prove both the constitution of the debt, and its resting owing, in the same way. So, for example, the constitution of the debt may be proved by writ or by judicial admission, and its resting owing by reference to oath (Wilson v. Strang 1830 8 S. 625; Deans v. Steele 1853 16 D. 317).

5. Judicial Admissions A judicial admission of the holograph quality of a prescribed holograph writ, or of the constitution or resting owing of a prescribed obligation or debt, is the equivalent of proof by writ or oath of the admitted fact (Wilson v. Strang *supra*; Darnley v. Kirkwood 1845 7 D. 595, L. Mackenzie at p. 598, L. Fullerton at p. 600). But, to have this effect, the judicial admission must be express, clear and unequivocal (Noble v. Scott 1843 5 D 723, L.J.-Cl. Hope at p. 727; Darnley v. Kirkwood *supra* L. Fullerton at p. 600) and a mere inference from averments of fact made by the defender is not sufficient. The reason for this is that, when a prescription applies, the usual presumptions from the averred actings of the parties, as to the incurring of a debt or its payment or non-payment, do not arise, and any onus which might otherwise have rested upon the debtor because of these presumptions is shifted to the creditor. The debtor need no longer prove payment or discharge, but the creditor must prove both the constitution and the subsistence of the obligation by the debtor's writ or oath (Alcock v. Easson *supra*; Darnley v. Kirkwood *supra*, L. Fullerton at p. 600; Cullen v. Smeal 1853 15 D. 868, L.J.-Cl. Hope at p. 872; Borland v. Macdonald Ltd. 1940 S.C.124, L. Jamieson at p. 140). The rule of written pleading, which provides that failure to deny an averment of fact within a party's knowledge is construed as an admission of that fact, does not apply when a defender pleads prescription. If a defender pleads that the pursuer /

pursuer must prove his case by writ or oath because a prescription applies, his failure to deny the pursuer's averments regarding constitution and resting owing is not construed as a judicial admission of them (Alcock v. Easson supra L.J.-Cl. Hope at p. 365). If the defender, in addition to pleading prescription, makes alternative averments of fact to meet the pursuer's case should the plea of prescription be repelled, from which, were there no prescription, an admission of the constitution of the debt might have been inferred or states an alternative defence, such as compensation, from which a similar implied admission might have arisen, these are construed as judicial admissions only if the prescription is held not to apply (Alcock v. Easson supra L.J.-Cl. Hope at p. 366). If a judicial admission, although express, clear and unequivocal, is qualified, the party wishing to found upon the admission, when prescription applies, may do so only if he disproves the qualification by the debtor's writ or by reference to his oath.

6. Proof by Writ (For a summary of the whole law relating to proof by writ see Walkers, The Law of Evidence in Scotland, Chapter 24). There seems little doubt that the constitution of a debt may be proved by a writ dated either before or after the end of the prescriptive period. The position however is much less clear in connection with the usefulness (for proving the subsistence or resting owing of a debt) of a writ dated within the prescriptive period. In Johnson v. Tillie, White & Co. 1917 S.C. 211, a case on the triennial prescription, it was conceded by counsel and accepted by a majority of the court that a writ dated within the prescriptive period could prove the resting owing of the debt. In this case Lord Johnston gave a very strong dissenting judgment which was approved by Lord Morison in Robb & Co. v. Stornoway Pier and Harbour Commission 1932 S.C. 290. Lord Mackay in Borland v. Macdonald Ltd. supra also stated that Johnson v. Tillie, White & Co. should be reconsidered. In Walkers on Evidence at p. 137 it is

stated that 'a writ is useless unless it is dated after the end of the prescriptive period' the argument relating to the decision in Johnson being relegated to a footnote. In two Sheriff Court cases, Halliday v. Watt & Co. Ltd. 1950 S.L.T. (Sh. Ct.) 58 and A. Wilson (Aberdeen) Ltd. v. Stewart & Co. 1957 S.L.T. (Sh. Ct.) 62 Johnson was followed and it therefore appears that the position is not as certain as stated in that work. In Lindsay v. Moffat 1797 M. 11,137 it was held that a writ dated on the last day of the prescriptive period was sufficient. When the debt had been proved by a writ to have been resting owing at a date after the end of the prescriptive period, it will usually be regarded as still subsisting at the date of the action, unless the debtor proves the contrary (Drummond v. Lees 1880 7 R 452) although the reverse was held in Storeys v. Paxton 1878 6 R. 293. When the creditor relies upon payment of interest after the end of the prescriptive period as establishing the subsistence of the debt, the general rule remains applicable, and these payments must be proved by writ of the debtor.

7. Entries in a party's business books are his writ (Jackson v. Ogilvie's Executor 1935 S.C. 154). Even unsigned jottings in books may be writ if they are admitted or proved to be holograph (Storeys v. Paxton supra). The authenticity of the signature or the fact that the writing is holograph may be proved by parole evidence (Borland v. Macdonald Ltd. supra). Markings by the debtor on the back of a bill of interest paid are his writ (Drummond v. Lees supra). Even when the debtor is in a sense acting on behalf of the creditor, a writ granted by him in that capacity is his. Where the debtor acted as factor on the trust estate of the creditor entries by the factor in the trust cash book were held to be his writ (Drummond v. Lees supra) and an inventory which included a debt due by the executor was, when signed by him, his writ (Jackson v. Ogilvie's Executor supra).

8. A document written by another person may be the writ of the party, and parole evidence is competent to show that it is. Thus letters of a party's factor were held to be constructively the writ of the party (Smith v. Falconer 1831 9 S 474). If the agent's authority is not admitted then it must be proved and shown that it was either specific or otherwise sufficient to bind the principal (McGregor v. McGregor 1860 22 D 1264).

9. Documents granted by the creditor and received and retained by the debtor become constructively the debtor's writ. This rule was applied to the following documents retained by a debtor; receipts granted by the creditor (Campbell's Trustees v. Hudson's Executor 1895 22 R 943) and a letter from the creditor acknowledging receipt of interest (Wood v. Howden 1843 5 D 507). A letter from the creditor to which the debtor's letter is a reply may be looked at to explain the latter and so becomes the debtor's writ (MacBain v. MacBain 1930 S.C. (H.L.) 72 and Rennie v. Urquhart 1880 7 R 1030). In Stevenson v. Kyle 1849 11 D 1086 diligence was granted to recover the creditor's letter to which the debtor's was an answer.

10. Once the existence of the obligation has been established by writ the amount of the debt may be proved by parole evidence (Borland v. Macdonald supra).

11. Proof by Oath (For a summary of the whole law relating to proof by oath see Walkers on Evidence Chapter 25). In interpreting the oath the judge ". . . must give effect to it, if at all intelligible, however palpably and disgracefully false it may appear. But, in order to give effect to it, its true tenor and importance must, at all events, be ascertained" (Hunter v. Geddes 1835 13 S 369 per Lord Jeffrey at p. 377). Thus a general denial may be disregarded if the previous specific admissions lead to the inference that it is untrue. (Hunter v. Geddes supra.) Further, if the deponent depones non memini or nihil novi, the reply is as a rule /

rule treated as negative (Fyfe v. Miller 1837 15 S 1188) but where the fact is recent and such that the deponent must almost certainly have known about it, and can hardly have forgotten, his answer may be disbelieved. He is then treated as if he had refused to answer, and held as confessed, unless he can show some good reason for his ignorance or forgetfulness (Dickson, A Treatise on the Law of Evidence in Scotland, 3rd edition § 1499).

12. Unless documents are made part of the oath by being placed in the hands of the deponent and his being examined on their contents, they cannot supplement, qualify, contradict or explain the oath (Hedde v. Baikie 1847 9 D 1254), but if the deponent refers to a document as supporting his statement and it does not do so, the court will reject that part of the oath (Cooper v. Hamilton 1824, 2 S 728, 1826, II W & S 59).

13. One of the most common problems in interpreting an oath is whether a qualification of an admission in the oath is intrinsic or extrinsic. If the qualification is intrinsic, it receives effect as part of the oath but if it is extrinsic, it is disregarded. The Reports are sprinkled with cases on this point but a useful summary of the law is given by Lord Deas in Cowbrough & Co. v. Robertson 1879 6 R 1301 at p. 1312. "I hold - 1st. That if the oath bear that some other mode of satisfaction or extinction than payment in money was stipulated or bargained for at the contraction of the debt, that other mode, if the debtor swears it was acted on, will be a competent and intrinsic quality of the oath, although not made the subject of subsequent agreement. 2nd. That if the debtor depones to an express subsequent agreement to hold the debt satisfied or extinguished by some other specific mode than payment in money, that other mode will be a competent and intrinsic quality of the oath, although not stipulated for when the debt was contracted. 3rd. That an /

an express subsequent agreement to forgive the debt, in whole or in part, deponed to by the debtor, will in like manner be intrinsic, and receive effect accordingly, because, so far as thus deponed to, the debt cannot be said to be resting owing.

"If I am asked how these views are reconcilable with holding that an allegation in the oath that the debt has been compensated is held, in the general case, extrinsic, my answer is that compensation, if not sworn to have been sanctioned and agreed to by the creditor, will be extrinsic, because compensation usually involves matter of law, and although the deponent may establish any relevant matter of fact by his own oath he cannot thereby establish matter of law."

14. Any reference must as a general rule be to the oaths of all the defenders, and if one of them depones that the debt has been paid, all are freed (Darnley v. Kirkwood supra), and so are any who do not admit constitution (Duncan v. Forbes 1831 9 S 540). In Christie v. Henderson 1833 11 S 744, where only two of the four acceptors were sued, these two admitting the constitution and being unable to depone to payment, resting owing was held proved although a co-obligant not called might have paid the debt. This case, although never overruled has been criticised quite extensively, notably in Drummond v. Crichton 1848 10 D 340.

15. As a general rule it is incompetent in an action to which the principal is party to refer to the oath of his agent (Bertram & Co. v. Stewart's Trustees 1874 2 R 255) but a reference was allowed apparently without objection, to the oath of the managing director of a limited company (Borland v. Macdonald supra).

16. In a debt due by a company while the oath as a general rule cannot be held affirmative unless all the partners have had an opportunity to depone (McNab v. Lockhart 1843 5 D 1014) there are circumstances in which it is competent to refer to some of the partners /

partners only. Thus in Neill & Co. v. Hopkirk 1850 12 D 618 where the firm had been dissolved and one of the partners sequestrated and discharged the oath of the other partner was competent to prove resting owing. In an earlier stage in the same case under the name Neill & Co. v. Campbell & Hopkirk 1849 11 D 979 the court refused a reference to the oath of the sequestrated and discharged partner. When a company has been dissolved the oath of a dead partner's representative will not suffice to prove the constitution and resting owing of a debt to that company (Nisbet's Trustees v. Morrison's Trustees 1829 7 S 307).

17. It is competent to refer to the oath of a deceased's representative or executrix (Stirling v. Henderson 11th March 1817 F.C.; Hamilton v. Hamilton's Executrix 1950 S.C. 39). It also appears to be competent to refer to the oath of a deceased's trustees (Murray v. Laurie's Trustees 1827 5 S 515; Bertram & Co. v. Stewart's Trustees supra).

18. Where the wife is alleged to have contracted debts falling within the praepositura constitution may be referred to the oath of the wife but, according to the most recent authority to render the husband liable resting owing must be referred to his oath (Mitchells v. Moultrys 1882 10 R 378). Previous to this decision it was held in Young, Trotter & Co. v. Playfair 1802 M. 12486 that the wife's oath was sufficient to prove resting owing.

LIST OF PERIODS OF STATUTORY "LIMITATIONS" IN CIVIL CASES IN SCOTS LAW

Note: This list is made up to 30th September 1968

<u>STATUTE</u>	<u>APPLICATION</u>	<u>STARTING DATE</u>
Representation of the People Act 1949 s. 66(1)	Every claim against a candidate or his election agent in respect of his election expenses.	Day on which the result of the election is declared.
Representation of the People Act 1949 s. 66(2)	All election expenses to be paid by candidate or his agent.	Day on which the result of the election is declared.
Summary Jurisdiction (Scotland) Act 1954 s. 75(3)	<u>TWENTY-EIGHT DAYS</u>	
Licensing (Scotland) Act 1959 s. 195 as amended by Licensing (Scotland) Act 1962 s. 26(1)	Action of damages in respect of proceedings taken etc. under the Act against any Judge, clerk of court, or prosecutor in the public interest.	Proceeding founded on, unless Act under which action is brought specifies a shorter period.
	<u>TWO MONTHS</u>	
Seditious Meetings Act 1817 s. 30	Proceedings, such as actions for damages, against sheriffs and other officials on account of anything done in execution of the Act or the Licensing (Scotland) Act 1962.	The cause of the proceedings.
	<u>THREE MONTHS</u>	
	Damage by riotous assembly to any house, shop, or buildings, or fixtures or furniture, goods or commodities destroyed or taken away or damaged.	Date when damage done. It is doubtful whether this limitation applies to damages provisions or only to penalties.

Small Debt (Scotland) Act 1837 s. 6	Any arrestment, unless renewed or followed by proceedings in Court.	Date of arrestment.
Burgh Police (Scotland) Act 1892 s. 413	Action by broker or dealer to recover possession of goods or articles delivered to owner by magistrates order.	Making of order.
Allotments (Scotland) Act 1922 s. 13(1)	Notice to treat following on Order for compulsory acquisition of land under the Allotments Acts.	Making of order.
<u>SIX MONTHS</u>		
Game (Scotland) Act 1832 s. 17	Damages for trespass on land.	Commission of trespass: one month's notice to be given of action.
Foreign Jurisdiction Act 1890 s. 13	Action against any person for anything done in pursuance of the Act or an order thereunder.	Act etc. complained of, or date when parties came within the jurisdiction or end of a continuing wrong.
Compensation (Defence) Act 1939 s. 11	Notice of claim for compensation under the Act.	Date on which the compensation accrues or date of the passing of Act, if later, the Treasury having discretion to extend this period.
Trade Disputes Act 1965 s. 1(2)	Action of reparation arising out of act defined in section 1(1) of the Act where that act done prior to the passing of Act.	Date of passing of the Act.

TWELVE MONTHS OR ONE YEAR

Criminal Procedure Act 1701 (1701 c. 6)	Process in action raised for damages for wrongous imprisonment.	Raising of action.
Limitation of Actions and Costs Act 1842 s. 5	Action for continuing damage done under any public local and personal, or local and personal Act.	Termination of damage.
Maritime Conventions Act 1911 s. 8	Action to enforce contribution in respect of overpaid proportion of damages resulting from maritime collision etc.	Date of payment; period extensible by Court.
Carriage of Goods by Sea Act 1924, Schedule, Article III, 6	Liability of carrier and ship for loss of or damage to goods.	Date of delivery of goods or date when goods should have been delivered.
Moneylenders Act 1927 s. 13(1)	Proceedings by a moneylender for any money lent or interest, or enforcement of any agreement made or security taken in respect of a loan.	Date on which cause of action accrued. Extension of time for written acknowledgments, lunacy or absence of the debtor.
Limitation (Enemies and War Prisoners) Act 1945 s. 4(a)	Proceedings under any of the enactments, prescribing a period of less than ten years, specified in the section where necessary party to the proceedings has been an enemy or has been detained in enemy territory.	Date when necessary party to the proceedings either ceased to be an enemy or detained in enemy territory or date of passing of the Act, whichever is later.
Crown Proceedings Act 1947 s. 9(2) as amended by Law Reform (Limitation of Actions) Act 1954 s. 5(3)	Proceedings against Crown in respect of loss of or damage to registered inland postal packet.	Date on which packet in question was posted.
Sewerage (Scotland) Act 1968 s. 20(3)	Claim for compensation against an authority under s. 20.	Date on which claim arose.

First discovery of the offence by appropriate registrar; see also three years.

Date on which the person aggrieved first had notice of the matters alleged in the complaint.

If trees are felled, the date of the felling; see also ten years.

Date on which thing done in pursuance of said Acts.

Date of thing done in execution of Act. One month's notice of action to be given.

Debt must have accrued not more than three years before death and demand must be made not more than two years after death.

Date of damage, loss or injury or salvage services. Period extensible by court.

Proceedings for the recovery of a fine which under the Act is recoverable on the summary conviction of the offender.

A complaint under the Act of maladministration by certain Government Departments.

Claims for compensation in respect of deterioration of trees taking place after the refusal of a felling licence for the trees.

TWO YEARS

Any action for anything done under a public local and personal, or local and personal Act.

Action against any person for anything done in execution of the Act.

Creditor of the deceased seaman obtaining debt from his property.

Action to enforce claim against vessel or owners for damage to another vessel, or cargo, freight, property, life or injuries, or for salvage services.

Industrial and Provident Societies Act 1965 s. 66(2)

Parliamentary Commissioner Act 1967 s. 6(3)

Forestry Act 1967 s. 11(3)

Limitation of Actions and Costs Act 1842 s. 5

Habitual Drunkards Act 1879 s. 31

Merchant Shipping Act 1894 s. 178(2)

Maritime Conventions Act 1911 s. 8

Carriage by Air Act 1961 Schedule I, Art. 29(1)	Damages for death, injury, delay in carriage of passengers, luggage or goods.	Date of arrival, or date on which aircraft ought to have arrived or the date on which the carriage stopped.
Civic Amenities Act 1967 s. 14(1) and (5)	Failure to comply with provisions of s.13 of the Act (replacement of felled trees) or the conditions of a consent given under a tree preservation order which requires the replacement of trees.	Date on which the failure to comply with the said provisions or conditions came to the knowledge of the local planning authority.
Superannuation (Miscellaneous Provisions) Act 1967 s. 8(3)(b)	Proceedings to recover any amount due under the section.	Date on which a right to and the amount of the damages is finally determined or from date on which that final determination came to the knowledge of the Ministry whichever is the later. Proceedings cannot be begun after the death of recipient of payments.
<u>THREE YEARS</u>		
The Prescription (Ejections) Act 1579 c. 19 (c. 81).	Actions of reparation for spuilzies or ejections and intrusion.	Date of spuilzie, ejection or intrusion.
Criminal Procedure Act 1701 (1701 c. 6)	Damages for wrongful imprisonment on criminal charge.	Last day of wrongful imprisonment.
Debtors (Scotland) Act 1838 s. 22	All arrestments.	Date of arrestment. Arrestments used on future or contingent debts prescribe in three years from the debt becoming due or the contingency being purified.
Lands Clauses (Scotland) Act 1845 s. 116.	Powers of promoters of undertaking for compulsory purchase or taking of lands.	Passing of the special Act, unless another period is laid down.

Allotments (Scotland) Act 1922 s. 13(2)	Order authorising compulsory acquisition of land where a previous Order has become void under s. 13(1) of the Act.	Expiry of three months referred to in s. 13(1), unless special reasons exist.
Industrial and Provident Societies Act 1965 s. 66(2)	Proceedings for recovery of a fine which is recoverable under the Act on the summary conviction of the offender.	Commission of the offence. See also twelve months.
<u>SIX YEARS</u>		
Income Tax Act 1952 s. 501(1) (as amended by Finance Act 1966 s. 27)	Proceedings for recovery of any fine or penalty incurred under the Act in connection with certain forms of taxation.	Date on which fine or penalty incurred. Extension in cases of fraud (s. 501(2)).
Income Tax Act 1952 s. 507 (as amended by Income Tax Management Act 1964 s. 17(3))	Claims for relief from taxation under the Income Tax Acts. Time limits for making certain claims are laid down by the Finance Act 1966, Sch. 6, para. 21(2). S. 507 does not apply to these claims.	Year of assessment to which the claim relates, unless otherwise expressly provided.
Land Commission Act 1967 s. 44(3)	Service of notice of assessment of levy resulting from an increase in value of land as a result of certain improvements made on the land.	The "relevant date" as defined in sections 29(5)(d), 30(5)(c), 31(5)(d), 33(5)(c) and 34(5)(e) i.e. the date of the sale of the land or the date on which the relevant project is begun or the date by reference to which the compensation falls to be assessed.
Land Commission Act 1967 s. 54(1)	Applications for relief of levy paid when the assessment of levy was excessive by reason of some mistake of fact in any document served or produced, or information furnished.	Date of service of the notice of assessment of levy.

Land Commission Act 1967
s. 71(2)

Application for relief in consequence of the issue of a certificate under Part III of Schedule 7 or Part IV of Schedule 8 of the Act.

Date of service of the notice of assessment of levy.

Forestry Act 1967 s. 11(3)

Claims for compensation in respect of deterioration of trees taking place after the refusal of a felling licence for the trees.

If trees are not felled, ten years prior to date of making claim. See also twelve months.

Presumption of Life Limitation (Scotland) Act 1891 s. 7

Demand or recovery by person who has disappeared (or any person deriving right from him) of any estate whose title can be made up by registration in a public register or any other estate which has been obtained under the provisions of the Act.

Date at which title made up or possession obtained under the Act.

Nuclear Installations Act 1965
s. 15(2)

Claim in respect of injury or damage caused by an occurrence involving nuclear matter stolen from, or lost, jettisoned or abandoned by, person whose breach of duty (imposed by sections 7, 8, 9 or 10 of the Act) gave rise to the claim.

Date of nuclear matter in question being stolen, lost, jettisoned or abandoned.

Nuclear Installations Act 1965
s. 15(1)

Claim under sections 7-11 of the Act.

Date of arising of the cause of the claim.

TEN YEARS

THIRTEEN YEARS

TWENTY YEARS

THIRTY YEARS