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When the Clock Starts Before the Defect Is Found: Prescription in Ogilvie v M1 RE Glasgow and LRW

Ogilvie Construction Limited against M1 Re Glasgow Limited; Ogilvie Construction Ltd against Leach Rhodes Walker Ltd

Outer House, Court of Session

Lord Lake, [2026] CSOH 44, 5 May 2026

Key Words

Prescription; time-bar; construction law; economic loss; fire safety; building regulations; cladding; cavity barriers; awareness of loss; relevant acknowledgement; induced error; Prescription and Limitation (Scotland) Act 1973; Prescription (Scotland) Act 2018.

1. **Headnote**
    1. These proceedings concerned whether obligations to make reparation arising from alleged defective design and construction of a hotel had been extinguished by the five-year prescriptive period under the Prescription and Limitation (Scotland) Act 1973, as amended by the Prescription (Scotland) Act 2018. [1], [6]
    2. The pursuer contractor sought damages from its architect for the costs of remedial works, while also seeking declarators that any obligations owed by it to the employer had prescribed. [3], [6]
    3. The court held that, for obligations to pay damages for economic loss, prescription begins when loss occurs as an objective fact. In Ogilvie's claims against LRW, that was when Ogilvie began implementing the relevant designs and incurred expenditure which would be wasted. In M1's claims against Ogilvie, loss occurred when the building was constructed with elements alleged not to comply with the building regulations. [10]–[13], [42], [48]
    4. Awareness that prescription had commenced did not require awareness that the works were defective, non-compliant, or legally actionable. It was sufficient that the creditor knew the relevant works had been carried out, expenditure had been incurred, and the relevant acts were attributable to an identifiable person. [42]–[45], [48], [49]
    5. The court further held that remedial works carried out under a construction contract did not constitute a relevant acknowledgement of a secondary obligation to make reparation under section 10(1) of the 1973 Act. [16]–[18]

6. On the facts, Ogilvie's confirmation that the installed cladding design was compliant with building regulations did not amount to words or conduct inducing relevant error so as to suspend prescription under section 6(4). [50]–[57]
7. All five obligations relied upon were therefore held to have prescribed and been extinguished. [58]

2. **Facts**
    1. The employer, M1 RE Glasgow Limited, appointed Ogilvie Construction Limited as design and build contractor for a 15-storey hotel in Glasgow. Ogilvie appointed Leach Rhodes Walker Limited as architect for the project. [1], [2]
    2. The original cladding design specified a 70mm layer of Kingspan Kooltherm K15 insulation. After the Grenfell Tower fire in 2017, the cladding design was reviewed and altered by adding a further 30mm of K15 insulation. The revised design was referred to as the 70+30mm Remedial Design. [2]
    3. Concerns arose as to whether the 70mm Design, the 70+30mm Remedial Design, and the cavity barrier design complied with Mandatory Standard 2.7 of the Building (Scotland) Regulations 2004. The first A10 report addressed the 70mm Design; later reports and correspondence addressed the revised design and routes to compliance. [23]–[31], [36]–[41]
    4. Ogilvie raised proceedings against LRW in 2020 seeking damages for the cost of implementing the 70+30mm Remedial Design instead of the 70mm Design, alleging that the 70mm Design was defective and that LRW had breached its duties. [3]
    5. After LRW's solicitors suggested in May 2023 that the 70+30mm Remedial Design was also defective, the proof was discharged, the case was sisted, and Ogilvie later amended its pleadings to add allegations concerning the revised cladding design and the cavity barriers. [3]
    6. Ogilvie then raised a separate action against M1 seeking declarators that any obligations owed by Ogilvie to M1 in respect of the 70mm Design, the 70+30mm Remedial Design, and the cavity barrier design had prescribed. [3], [6]

3. **Issues**
    1. The principal issues were whether five distinct obligations to make reparation had been extinguished by prescription. [6]
    2. Those alleged obligations were:
        1. Ogilvie's claim against LRW in respect of the 70+30mm Remedial Design;
        2. Ogilvie's claim against LRW in respect of the cavity barrier design;
        3. M1's claim against Ogilvie in respect of the 70mm Design;
        4. M1's claim against Ogilvie in respect of the 70+30mm Remedial Design; and
        5. M1's claim against Ogilvie in respect of the cavity barrier design. [6]
    3. The issues depended upon when the five-year prescriptive period commenced, whether commencement was postponed by lack of awareness under section 11(3), whether any period fell to be excluded due to induced error under section 6(4), and whether remedial works amounted to a relevant acknowledgement under section 10(1). [7], [15], [19], [50]

4. **Decision**
    1. The court held that, in each case, the relevant loss occurred when the works were carried out and expenditure was incurred, or when M1 received a building containing elements alleged not to comply with the regulations. [12], [13]
    2. Construction of the 70mm Design began in April 2017; works to install the 70+30mm Remedial Design began in or around October 2017; and the cavity barrier works had been

carried out before February 2017. [12], [48]

3. The court held that awareness of loss for the purposes of section 11 did not require awareness that the works were defective or legally non-compliant. [42], [43], [48]
4. In respect of section 11(3A), it was sufficient that the creditor was aware of the relevant objective facts: that the works had been carried out, that expenditure had been incurred, and that the works or design were attributable to an identifiable party. [42]–[45], [48], [49]
5. The court rejected the argument that the prescriptive period was postponed by lack of requisite knowledge under section 11(3), notwithstanding that regulatory non-compliance was identified or appreciated only later. [42]–[49]
6. The court held that remedial works undertaken by Ogilvie were referable to performance of primary contractual obligations and did not clearly acknowledge any secondary obligation to make reparation. [16]–[18]
7. The court rejected reliance on section 6(4). Ogilvie's letter of 23 February 2018, confirming that the installed cladding was compliant with building regulations, was a representation that Ogilvie had complied with its contract. In the circumstances, that was not sufficient words or conduct to make it unjust for Ogilvie to rely on prescription. [50]–[56]
8. Nor did LRW's failure to provide Ogilvie with the third A10 report amount to induced error under section 6(4). Ogilvie had not established that its error was induced by LRW's words or conduct for the purposes of the subsection. [57]
9. Accordingly, all five obligations were held to have been extinguished by prescription. [58]
10. The decision applies the strict approach associated with Gordon's Trustee v Campbell Riddell Breeze Paterson LLP, notwithstanding the 2018 amendments to the 1973 Act. [42], [43], [49]
11. It demonstrates that construction claims may prescribe before defects are discovered or regulatory non-compliance is appreciated. [42], [48], [58]

5. **Ratio Decidendi**
    1. For the purposes of section 11 of the Prescription and Limitation (Scotland) Act 1973, economic loss occurs as an objective fact when the relevant loss-producing event occurs. In contractor claims, that may be when expenditure is incurred on works that are alleged to be wasted; in employer claims, it may be when the employer receives a building containing elements alleged to be non-compliant. [10]–[13], [42], [48]
    2. Awareness that prescription has commenced does not require knowledge that something has gone wrong, that the works are defective, that the building is non-compliant, or that legal liability exists. [42]–[45], [48], [49]
    3. Remedial works carried out in performance of a construction contract are not, without more, a relevant acknowledgement of a secondary obligation to make reparation within section 10(1). [16]–[18]
    4. A contractual assurance that works are compliant, or that contractual obligations have been performed, will not necessarily amount to words or conduct inducing error for the purposes of section 6(4). On the facts, Ogilvie's confirmation of compliance did not suspend prescription. [50]–[56]
    5. A failure to pass on a report, without proof that the creditor's error was induced by the debtor's words or conduct, will not engage section 6(4). [57]

Comment

This decision is a bracing reminder that, in Scots construction law, prescription is not a kindly clerk waiting at the counter until everyone has located the defect, read the regulations, consulted the experts, and looked suitably disappointed. It is a clock. It starts when loss occurs, not when the penny drops. [10]–[13], [42], [48]

Lord Lake's analysis confirms, with admirable lack of sentimentality, that economic loss is suffered as an objective fact when money is spent on works that are later alleged to be wasted, or when a building is constructed with elements alleged not to comply with regulatory requirements. Later discovery that the building may have been wrapped, insulated, or detailed in a manner that offends fire safety requirements does not reset the machinery. Nor does it delay the start. The law does not wait for a site meeting, expert report, or later realisation that the works may have been defective. [10]–[13], [42]–[45], [48]

The result is severe, but not surprising. Ogilvie and M1 knew that works had been done, knew that expenditure had been incurred, and knew who was involved. That was enough. Knowledge that the works were defective, non-compliant, or legally actionable was not required. The 2018 amendments did not convert prescription into a discovery-based regime. They altered the statutory test, but did not install a rescue parachute. [42]–[49]

The arguments on relevant acknowledgement and induced error fared no better. Remedial works carried out under a construction contract were treated as performance of primary obligations, not as a solemn nod to a secondary liability in damages. Likewise, Ogilvie's confirmation that the cladding complied with building regulations was not enough, in the circumstances, to suspend prescription. It was treated as an assertion of contractual performance, not as words or conduct making it unjust for prescription to be invoked. In litigation terms, that is the difference between a spanner and a wand. [16]–[18], [50]–[56]

The position between LRW and Ogilvie was no more forgiving. Ogilvie had not received the third A10 report and was unaware of the possible non-compliance until LRW's solicitors raised the issue in May 2023. But that did not assist for section 6(4) purposes. The court held that Ogilvie had not established that its error was induced by LRW's words or conduct. A possible contractual duty to provide information was a different question; it did not alter the operation of section 6(4). [35], [41], [57]

For employers, contractors, consultants, and insurers, the lesson is blunt. In construction defect claims, especially those involving cladding, cavity barriers, fire safety and regulatory compliance, prescription may have done its work long before the defect becomes visible, notorious, or financially catastrophic. Waiting for certainty may feel prudent. In prescription terms, it may be fatal. [42]–[49], [58]

The decision therefore sits firmly in the post-Gordon's Trustee landscape: intellectually rigorous, commercially unforgiving, and not dependent upon whether the claimant has only just discovered the problem. The law's message is clear enough. Once money has been spent on defective works, or once a building containing allegedly non-compliant elements has been constructed, the stopwatch may already be running. By the time everyone agrees there is a problem, the claim may not merely be difficult. It may be extinct. [42], [48], [58]

#Prescription #TimeBar #ConstructionLaw #ScotsLaw #EconomicLoss #FireSafety #BuildingRegulations #Cladding #CavityBarriers #CourtOfSession #OgilvieVM1

Authorities

Case Law:

Prescription: Commencement of the Prescriptive Period for Economic Loss (Core Governing Principles)

1. ***Gordon's Trustee v Campbell Riddell Breeze Paterson LLP*** [2017] UKSC 75, 2017 SLT 1287
   [9]–[11], [19], [42]–[45], [48], [49] – *Treated as the leading authority on the meaning of "loss, injury or damage" for the purposes of section 11 of the Prescription and Limitation (Scotland) Act 1973. The case establishes that loss is the existence of physical damage or financial loss as an objective fact, and that prescription is not postponed until the creditor becomes aware that something has gone wrong, that a detriment has been suffered in the sense of being worse off, or that the act or omission is actionable in law.*
2. ***David T Morrison & Co Ltd v ICL Plastics Ltd*** [2014] UKSC 48, 2014 SC (UKSC) 222 [10], [19], [43] – *Cited as part of the Supreme Court jurisprudence on the meaning of "loss, injury or damage" under sections 6 and 11 of the 1973 Act, forming part of the background to the later clarification in* ***Gordon's Trustee****.*

Economic Loss in Construction Cases: Loss Occurring Before Discovery of Defect

1. ***Midlothian Council v Raeburn Drilling and Geotechnical Ltd*** [2019] CSOH 29, 2019 SLT 1327
   [11], [19], [43] – *Cited as part of the line of authority applying* ***Gordon's Trustee*** *to economic loss, including in construction-related contexts, where prescription may begin before the creditor discovers the defect or appreciates the basis of the claim.*
2. ***WPH Developments Ltd v Young & Gault LLP*** [2021] CSIH 39, 2022 SC 28 [11], [19], [43], [49] – *Applied as Inner House authority confirming that the ratio of* ***Gordon's Trustee*** *is not confined to cases where the creditor is subjectively aware of detriment. The 2018 amendments did not change the established meaning of "loss, injury or damage".*
3. ***Tilbury Douglas Construction Ltd v Ove Arup & Partners Scotland Ltd*** [2024] CSIH 15, 2024 SC 383 [11], [19], [43], [54], [55] – *Cited both as part of the post-****Gordon's Trustee*** *line of economic-loss prescription authority and as Inner House authority on section 6(4). It supports the proposition that prescription may begin before the creditor appreciates the existence or consequences of a defect, and that professional assurances do not necessarily amount to induced error.*

Identification of the Relevant Obligation to Make Reparation

1. ***McClure Naismith LLP v Harley Haddow Partnership & Others*** [2017] CSOH 125, [2018] SCLR 257 [6] – *Cited for the principle that each breach of contract may give rise to a distinct obligation to make reparation. Although several losses may flow from a single breach, there is a single prescriptive period for the obligation to make reparation arising from that breach.*

Relevant Acknowledgement under Section 10(1) of the 1973 Act

1. ***Gibson v Carson*** 1980 SC 356 [16], [18] – *Cited for the principle that, to constitute a relevant acknowledgement under section 10(1), the act or abstention must be such that it can only reasonably be explained by reference to the particular obligation in question. Lord Lake applied that approach in holding that remedial works were referable to primary contractual obligations, not to a secondary obligation to make reparation.*
2. ***Dunlop v McGowans*** 1980 SC (HL) 73 [9], [17] – *Cited for the traditional formulation of commencement of prescription by reference to concurrence of damnum and injuria, and for Lord Keith's reference to the obligation to make reparation for loss caused by breach as a singular obligation. Lord Lake distinguished the secondary obligation to make reparation from*

the underlying primary contractual obligation.

Temporary Disconformity and Practical Completion (Considered but Not Applied)

1. ***Huntaven Properties Ltd v Hunter Construction (Aberdeen) Ltd*** [2017] CSOH 57 [13], [15] –
   Referred to in relation to temporary disconformity and whether loss might arise only at practical completion. No such submission was advanced in the present case, and the approach was not applied.
2. ***Agro Invest Overseas Ltd v Stewart Milne Group Ltd*** [2018] CSOH 120 [13] – *Referred to alongside* ***Huntaven*** *in relation to temporary disconformity and practical completion. The argument was not applied on the facts of the present case.*

Postponement of Prescription: Error Induced by the Debtor (Section 6(4))

1. ***Tilbury Douglas Construction Ltd v Ove Arup & Partners Scotland Ltd*** [2024] CSIH 15, 2024 SC 383 [54], [56] – *Applied as Inner House authority that assurances as to the adequacy of design or performance of contractual obligations do not, without more, constitute words or conduct inducing error for the purposes of section 6(4). The debtor's conduct must induce an error as to the remedies available such that the creditor fails to make a relevant claim.*
2. ***Legal and General Assurance (Pensions Management) Ltd v Halliday Fraser Munro*** [2025] CSIH 24, 2025 SLT 1151 [55]–[57] – *Applied as Inner House authority that section 6(4) does not operate merely because a party has asserted contractual performance or absence of negligence. It is circular and illogical to rely on the contractual provision or warranty said to have been breached as itself the representation inducing error.*
3. ***Kennedy v Royal Bank of Scotland plc*** [2018] CSIH 70, 2019 SC 168 [43] – *Cited through* ***WPH Developments*** *in support of rejecting attempts to confine* ***Gordon's Trustee*** *to cases where the creditor subjectively knew of the detriment.*
4. ***BP Exploration Operating Co Ltd v Chevron Transport (Scotland)*** [2001] UKHL 50, 2002 SC (HL) 19 [55] – *Referred to, through* ***Legal and General****, in connection with the policy underlying section 6(4): that time may be excluded where words or conduct of the debtor induce error making it unjust for the debtor to rely on prescription.*
5. ***Caledonian Railway Co v Chisholm*** (1886) 13R 773 [55] – *Referred to, through* ***Legal and General****, as historical authority relevant to the equitable foundation of excluding time where a creditor has been misled into failing to pursue a claim.*

Binding Authorities *(Binding on the Outer House of the Court of Session)*

Supreme Court (UK)

1. ***Gordon's Trustee v Campbell Riddell Breeze Paterson LLP*** [2017] UKSC 75; 2017 SLT 1287 – *Leading authority on commencement of prescription for obligations to make reparation and on "loss, injury or damage" as an objective fact. [9]–[11], [42]–[45], [48], [49]*
2. ***David T Morrison & Co Ltd v ICL Plastics Ltd*** [2014] UKSC 48; 2014 SC (UKSC) 222 – *Supreme Court authority on the interpretation of sections 6 and 11 of the 1973 Act. [10], [19], [43]*
3. ***Dunlop v McGowans*** 1980 SC (HL) 73 – *House of Lords authority referred to in relation to the traditional analysis of commencement of prescription and the nature of the obligation to make reparation. [9], [17]*
4. ***BP Exploration Co Ltd v Chevron (Libya) Ltd*** [2001] UKHL 50; 2002 SC (HL) 19 – *House of*

Lords authority referred to in connection with the policy underlying section 6(4). [55]

Inner House of the Court of Session

1. ***WPH Developments Ltd v Young & Gault LLP*** [2021] CSIH 39; 2022 SC 28 – *Inner House authority confirming the breadth of* ***Gordon's Trustee*** *and rejecting attempts to limit it to cases of known detriment. [11], [43], [49]*
2. ***Tilbury Douglas Construction Ltd v Ove Arup & Partners Scotland Ltd*** [2024] CSIH 15; 2024 SC 383 – *Inner House authority on both commencement of prescription in economic-loss construction cases and the limited operation of section 6(4). [11], [43], [54], [56]*
3. ***Legal and General Assurance (Pensions Management) Ltd v Halliday Fraser Munro*** [2025] CSIH 24; 2025 SLT 1151 – *Inner House authority on section 6(4), particularly the insufficiency of mere assertions of contractual performance or non-negligence. [55]–[57]*
4. ***Kennedy v Royal Bank of Scotland plc*** [2018] CSIH 70; 2019 SC 168 – *Inner House authority referred to through* ***WPH Developments*** *on the proper scope of* ***Gordon's Trustee****. [43]*

Persuasive Authorities *(Persuasive but not strictly binding, although influential)*

Outer House of the Court of Session

1. ***Midlothian Council v Raeburn Drilling and Geotechnical Ltd*** [2019] CSOH 29; 2019 SLT 1327 – *Persuasive Outer House authority illustrating that economic loss may occur, and prescription may begin, before the defect or legal significance of the loss is discovered. [11], [43]*
2. ***McClure Naismith LLP v Harley Haddow Partnership & Others*** [2018] SCLR 257 – *Outer House authority on identifying the relevant obligation to make reparation and the single prescriptive period applicable to each breach. [6]*
3. ***Huntaven Properties Ltd v Hunter Construction (Aberdeen) Ltd*** [2017] CSOH 57 – *Outer House authority referred to in relation to temporary disconformity and practical completion. [13], [15]*
4. ***Agro Invest Overseas Ltd v Stewart Milne Group Ltd*** [2018] CSOH 120 – *Outer House authority referred to alongside* ***Huntaven****. [13]*

Historic Scottish Authority

1. ***Gibson v Carson*** 1980 SC 356 ***(highly influential)*** *– Important Scottish authority on section 10(1), cited and applied for the requirement that acknowledgement must be referable to the particular obligation in question. [16], [18]*
2. ***Caledonian Railway Co v Chisholm*** (1886) 13R 773 ***(historical)*** *– Historical authority referred to in connection with the equitable basis of excluding time where the creditor has been misled. [55]*

Legislation:

Prescription of Obligations to Make Reparation (Core Statutory Framework)

1. ***Prescription and Limitation (Scotland) Act 1973*** [1], [6]–[15], [19], [42]–[45], [48]–[58] – *The Act provided the fundamental statutory framework governing the extinction of obligations by prescription, including the five-year prescriptive period for obligations to make reparation. The court relied in particular on sections 6, 10 and 11 in determining whether the five obligations said to arise from alleged breaches of contract had been extinguished.*

2. ***Prescription (Scotland) Act 2018*** [1], [8], [19], [42], [49] – *The 2018 Act amended section 11 of the 1973 Act and was applied in determining when the prescriptive period for obligations to pay damages commenced. In particular, it introduced section 11(3A), identifying the facts of which the creditor must be aware. The court held that the amendments did not alter the established meaning of "loss, injury or damage" as an objective fact and did not defer prescription until awareness of defect, wrongdoing, regulatory non-compliance, or legal enforceability.*

Commencement of Prescription: Statutory Test for "Loss, Injury or Damage"

1. ***Prescription and Limitation (Scotland) Act 1973, section 11*** ***(as amended)*** [8]–[14], [19], [42]–[45], [48], [49] – *Section 11 governed when obligations to pay damages become enforceable for prescription purposes. It provides that such obligations are treated as enforceable from the date when "loss, injury or damage" occurs, subject to limited postponement where the creditor is unaware, and could not with reasonable diligence have been aware, of specified facts. The court applied section 11 on the basis that economic loss occurred when expenditure was incurred on works alleged to be wasted, or, in M1's case, when the building was constructed with elements alleged not to comply with the regulations. Prescription was not deferred until later discovery of non-compliance or legal defect.*
2. ***Prescription and Limitation (Scotland) Act 1973, section 11(3A)*** [8], [19], [42]–[45], [48], [49] – *Section 11(3A) identifies the facts of which a creditor must be aware for the prescriptive period to commence: that loss, injury or damage has occurred; that it was caused by a person's act or omission; and the identity of that person. The court held that awareness of these facts did not require knowledge that the act or omission was wrongful, that the works were defective or non-compliant, or that the loss was legally actionable.*

Relevant Acknowledgment Interrupting Prescription

1. ***Prescription and Limitation (Scotland) Act 1973, section 10(1)*** [15]–[18], [58] – *Section 10(1) governed whether performance by or on behalf of the debtor constituted a relevant acknowledgement interrupting prescription. Such performance must clearly indicate that the particular obligation still subsists. The court held that remedial works carried out pursuant to primary contractual obligations did not amount to acknowledgement of a secondary obligation to make reparation.*

Postponement or Exclusion of Time: Error Induced by the Debtor

1. ***Prescription and Limitation (Scotland) Act 1973, section 6(4)*** [50]–[58] – *Section 6(4) provides for the exclusion of any period during which, by reason of fraud or error induced by the debtor's words or conduct, the creditor failed to make a relevant claim. The court held that, on the facts, Ogilvie's confirmation of regulatory compliance did not induce relevant error on M1's part, and LRW's failure to provide Ogilvie with the third A10 report did not induce error on Ogilvie's part for the purposes of section 6(4). No part of the prescriptive period therefore fell to be excluded.*

Building Safety Regulatory Context (Factual Background Only)

1. ***Building (Scotland) Regulations 2004*** [25], [27], [32], [48] – *The Regulations provided the statutory and regulatory background against which the alleged design non-compliance arose. They formed part of the factual context for the alleged breaches, but did not determine when loss occurred for prescription purposes.*
2. ***Building (Scotland) Regulations 2004, Schedule 5*****, Mandatory Standard 2.7** [25]–[27],

[37], [48] – *Mandatory Standard 2.7 concerns the spread of fire on external walls and underpinned the allegations of non-compliance relating to cladding insulation and cavity barriers. The court held, however, that awareness of regulatory non-compliance was not required for awareness of "loss, injury or damage" for prescription purposes.*

Statutory Guidance (Non-Legislative, Contextual Only)

1. ***Non-Domestic Technical Handbook (issued under the Building (Scotland) Regulations 2004)*** [25]–[27] – *The Non-Domestic Technical Handbook, published by the Scottish Government, was referred to as guidance on achieving the standards contained in the 2004 Regulations. It identified possible routes to compliance with Mandatory Standard 2.7, including the "Linear Route to Compliance" and the BR135 route. It was relevant to the factual and technical background, but was not determinative of the prescription issues.*

Summary of Legislative Emphasis

The prescription regime under the 1973 Act, as amended by the 2018 Act, was central to the judgment's reasoning.

The Building Regulations, Mandatory Standard 2.7 and the Non-Domestic Technical Handbook formed the regulatory and factual matrix for the alleged defects, but did not control the commencement of prescription.

The court drew a clear distinction between awareness of regulatory non-compliance and awareness of the objective facts required to start the prescriptive clock.

Legal Texts & Commentary:

Prescription: Statutory Interpretation and Conceptual Framework (Primary Commentary Sources)

1. **Johnston, *Prescription and Limitation (1st Edition)*** [9] – *This text was referred to for the commentary that the traditional Latin concepts of damnum and injuria add little to the statutory analysis under the Prescription and Limitation (Scotland) Act 1973 and risk causing confusion. The court referred to this commentary when emphasising that the correct approach to commencement of prescription is to apply the statutory language of sections 6 and 11 directly, rather than to allow Latin terminology to obscure the statutory test.*
2. **Johnston, *Prescription and Limitation (2nd Edition)*** [15], [16] – *This text was cited in the court's analysis of section 10(1), concerning relevant acknowledgement. In particular, it was referred to for the proposition that carrying out repairs to work done, or goods supplied, may constitute a relevant acknowledgement only where the work can be related to the particular obligation in question. Applying that approach, the court held that Ogilvie's remedial works were referable to primary contractual obligations and could not only reasonably be explained by reference to a secondary obligation to make reparation.*

Legislative Policy and Reform: Knowledge-Based Postponement of Prescription

1. **Scottish Law Commission, *Report on Prescription (July 2017)*** [49] – *The Report was relied upon in submissions and addressed in the judgment in relation to the amendments later enacted by the Prescription (Scotland) Act 2018. In particular, it was referred to for the Commission's discussion of the proposed requirement that a creditor be aware of the factual cause of loss before time begins to run. The court noted the Report but held that it could not displace the authoritative interpretation of "loss, injury or damage" established by **Gordon's Trustee** and subsequent Inner House authority. The 2018 amendments did not alter the*

established meaning of those words as referring to objective facts.

Summary of Emphasis

Johnston's treatise was the principal secondary source referred to in the judgment. It was used in relation to both the language of commencement of prescription and the proper analysis of relevant acknowledgement under section 10(1).

The Scottish Law Commission Report was addressed in the context of an argument that the 2018 amendments required a broader degree of creditor awareness before prescription began to run. That argument was rejected.

(Note: No other textbook, practitioner work, or academic article appears to have played a material role in the court's reasoning.)

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