

1710. *January 25.*

PHILIP SAVAGE, Chancellor of the Court of Exchequer in Ireland, and SIR PATRICK DUN of the City of Dublin, Knight, *against* MR JAMES CRAIG, Advocate.

No 76.
A party being pursued upon an Irish bond, the Lords restricted it to the half, conform to the condition of the bond, and to the annualrent due by the law of Scotland; and found, that on the debtor making payment, according to that sentence, he was entitled to a discharge without any reservation.

MR ROBERT CRAIG of Riccarton, with Mr James his brother, having borrowed L. 800 Sterling from Philip Savage and Sir Patrick Dun, and granted bond for the double of the sum after the Irish form, with the usual conditions and restrictions upon payment at the terms therein mentioned, the creditors pursued Mr James Craig upon the bond before the Session.

Alleged for the defender; The bond ought to be restricted to the sum truly received, and annualrent thereof due by the law of Scotland; for the creditors having chosen to pursue here, their pretensions must be regulated by the law of the place; and who claim the benefit thereof, must acquiesce therein, without grudging at the inconveniences attending it; *2do*, The creditors must, upon payment, (in the terms of the law of Scotland, where they find it their interest to pursue,) give an absolute discharge, without any reservation.

Replied for the pursuers; The bond being drawn and signed in Ireland, conform to the law there, is good to the full extent against the granters all the world over where they can be reached; at least, *2do*, What the pursuers cannot recover by the law of Scotland, ought to be reserved to them to pursue for against the debtors persons and estates in Ireland, conform to the law of that kingdom.

THE LORDS found, That the defender is liable only for the L. 800, and annualrents thereof according to the law of Scotland; and that upon payment thereof, the pursuers are obliged to discharge the bond, and all that has followed thereon, without any reservation.

Fol. Dic. v. 1. p. 323. Forbes, p. 388.

* * * Fountainhall reports the same case :

PHILIP SAVAGE, Chancellor of the Exchequer in Ireland, and Sir Patrick Dun of the city of Dublin, having lent L. 800 Sterling to Mr Robert Craig of Riccarton, they take a mortgage upon his Irish estate, and in further security, get a bond from him and Mr James Craig, his brother, for L. 1600 Sterling, as the double sum in the Irish or English form; and now they raise a process against them before the Lords on their bond for payment of the whole.—THE LORDS restricted the sum to the half, conform to the condition of the bond, and to the annualrent of six per cent. only allowed to be taken by the laws of Scotland; for which restriction many decisions and practiques could be adduced.—The strangers reclaimed, *alleging*, That the bond being good for the whole by the

Irish and English law, it must stand good against the debtor, wherever he dwell ; and they were craving no annualrent but the double sum ; and if they were claiming interest, they must have ten per cent. which the law of Ireland permits ; and when interest ceases, how soon it equals the principal, conform to the civil law, *l. 29. C. de usuri*, therefore to balance that inconveniency and loss, they ought to have sentence for the whole debt contained in the bond.—*Answered*, It is against the principles of equity, to exact more than you gave ; *nemo ex mutuo in plus obligatur quam accepit* ; and Ulpian, in *l. 11. § 1. D. de rebus credit.* gives a memorable instance of it ; and therefore the sum truly received, and its annualrent, is all that in conscience can be demanded.—THE LORDS restricted accordingly.—Then Mr Savage offered to give a discharge and receipt for what he got, but with a reservation to seek the remainder of what he wanted in Ireland, and that he might therewith burden and affect their persons and estates lying there.—*Answered*, This was a most unreasonable offer ; for by the common laws of the whole world, *actor sequitur forum rei* ; and if you have elected to pursue your debtor in Scotland, you have thereby submitted yourself to the law of that place ; for though I may be convenable in two competent *fora*, both *ratione domicilii et contractus et rei sitæ*, yet if you pitch upon one of these, to that you must stand, both as to its advantages and disadvantages, and not pick out the one and leave the other, so as to take all the law of Scotland gives you, and then seek to reserve the rest to be obtained from the Irish judicatories. *Quem sequitur commodum, eundem et incommodum*, and therefore he ought to have deliberated before he entered his process, which of the jurisdictions would serve his turn best ; but if he take decret here, he must not expect any reservation will be allowed him for the superplus ; and the Court of Groningen very justly found, that no man was to have the benefit of their law, that was not willing to acquiesce therein. But if Mr Savage be not satisfied with what the law of Scotland determines in the case of double bonds, he may desert his process, and intent a new one before the courts of Ireland, to reach his person if they shall find him there, and to affect his heritage and chattels lying in that place, conform to *l. 19. § 2. D. de judiciis*.—THE LORDS refused any such *salvo*, and found he behoved to give a discharge of the whole, and that Mr Craig, the debtor, was not bound to accept of a partial receipt, bearing a reservation to pursue for the rest any where else. If any appeal should be made against this interlocutor to the British Parliament, it might give the English a rise to enjoin the observance of their law in this particular upon us, to bring us to an uniformity of laws by degrees.

Fountainball, v. 2. p. 559.