

No 73.

ording to the rules prescribed in this country ; and in the circumstances of the present case, where the the debtors, during the statutory period, not only had a proper *forum* in this country, in which they might have been sued, but were all the while possessed of large estates in Scotland, which might have been attached by their creditors, every plea of hardship which might occur in particular instances seems altogether precluded.

The Court were very much divided in opinion on this point. After a judgement had been pronounced, sustaining the objection, the cause was for some time delayed, in expectation of the Creditors obtaining decreets in England against the Company ; by which, it was admitted, the plea of prescription would be removed. In this, however, the Creditors failed ; for which it was given as a reason, that the distribution of the Company's funds having been by an act of Parliament intrusted to the Court of Session in Scotland, the English courts declined to interfere.

Upon advising a reclaiming petition, therefore, with answers, the LORDS adhered to their former judgment. See a case between the same parties, *voce* FRAUD.

Lord Ordinary, *Monboddo*. For Abraham Delvalle, *Lord Advocate, Wight, Craig*.
For the Creditors in general, *Mackintosh, Buchan-Hepburn, Elphinston, Blair*.
Clerk, *Colquhoun*.

C. *Fol. Dic. v. 3. p. 221. Fac. Col. No. 264. p. 402.*

This cause having been appealed, (March 12th 1788,) counsel were called to be heard ; and no counsel appearing for the respondents, the appellant's counsel were heard to state and argue the case ; and being withdrawn, ' ORDERED, That the interlocutors complained of be reversed, in so far as they sustain the objections to the bonds claimed by the appellants, that the same are not entitled to a place in the ranking, in respect they are cut off by the negative prescription of the law of Scotland.'

1792. February 14.

The YORK-BUILDINGS COMPANY *against* RICHARD CHESWELL, and Others.

No 74.
The Scottish prescriptions not pleadable by debtors domiciled in England.

In the ranking of the creditors of the York-buildings Company, claims having been made by Cheswell and others, upon bonds granted by the Company, on which no document had been taken for upwards of 40 years, prescription was objected by the Company.

The very same question formerly occurred between different classes of the creditors, when it underwent a very complete discussion, both in writing and in a hearing in presence. The Court then sustained the objection ; York-buildings Company *contra* Delvalle, No 73. p. 4525. That judgement, however,

was reversed, on appeal to the House of Lords; but the reversal was attended with this peculiarity, that the objectors not appearing in that high Court, the proceedings took place *ex parte*.

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In the present case there did not seem to be any material addition made to the arguments stated in the former one; and to these it is therefore sufficient to refer. But the Court now viewed the question in a different light. It was

Observed on the Bench; This is in all respects an English company, domiciled in England, and by their charter of erection fixed down to a residence there; so that in every instance of their being sued in this country, citation at the pier and shore of Leith was necessary. If, instead of being thus permanent in England, they had changed their place of residence to Scotland, and continued here during the 40 years, it might have been competent to them to plead our prescription, notwithstanding that England was the *Jocus contractus*. For it is the *lex domicilii debitoris*, which in this matter is the governing rule; and that law admits not this prescription. It is clear, that in England action on those bonds would lie against the Company. They are not therefore, in the words of the statute of 1469, 'obligations of nane avail.' The debtors surely would not be entitled to say so, for having brought their effects over the border. In all cases in which the Court has sustained our prescriptions against English debts, the debtors were considered as having acquired a residence in this country.

THE LORDS, therefore, having advised the cause on memorials, by a great majority repelled the objection of prescription.

For the Company, *Montgomery et alii*. Alt. *Maconochie et alii*. Clerk, *Colquhoun*.
S. *Fol. Dic. v. 3. p. 221. Fac. Col. No. 207. p. 436.*

DIVISION. VIII.

Annualrent, by what Law regulated, whether of the
Creditor's country or of the Debtor's.

1677. December 8. ANTONIET APERON against MORISON.

By commission reported from Bourdeaux, it was found proven to be the custom of that place, that what money brokers give out for merchants, it did bear annualrent without paction.

No 75.

Stair, v. 2. p. 573.