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to have exercised its discretion, especially when it is considered what is the probable effect, in a case of this description, by the Court coming to the conclusion they have done, namely, suspending the whole income to which this party is entitled, and thereby, in effect, might prevent this person prosecuting his demand, for want of the means of doing so. Under these circumstances it does occur to me, that we ought to reverse the judgment of the Court below, without caution, there being most probably a large sum in the hands of the persons themselves to meet any demand which can possibly be made against them.

I see that the parties go before the time that Mr Vans Agnew was entitled to possession of the estate. During that time, it seems to me, that person can no more claim these meliorations than Mr Vans Agnew's father could have claimed them. Unquestionably, if they had proceeded regularly under the statute, the case might have been different; but not having proceeded under the statute, he can stand in no better situation than Mr Vans Agnew's father himself could have stood. For these reasons, my Lords, perfectly concurring in the opinion that the noble and learned Lord who preceded me has expressed,—considering that this was a case in which the Court of Session ought to have exercised its discretion, I think your Lordships ought to discharge the arrestment without caution.

Appellant's Authorities.—2. Stair, 1. 22.; 2. Ersk. 1. 25.; Morr. Dict. 7. Bona et Mala Fides, p. 1770. et seq.; 1. Bank. 8. 25.; Hamilton, March 4. 1823, (2. Shaw and Dunlop, No. 241, 242. and ante, No. 43.)

Respondent's Authorities.—Duke of Gordon v. Innes Binning, Jan. 18. 1676, (13,401.); Rutherford, Feb. 28. 1782, (13,422.); Creditors of Brough, Nov. 26. 1793, (2585.); 1. Stair, 8. 6.; 3. Ersk. 1. 2.; 4. Stair, 50. 21.; 2. Ersk. 11. 3.; 1. Bank. 7. 134.; 3. Stair, 1. 33.; 3. Ersk. 6. 12.; 3. Bank. 1. 37.; Earl of Stair, Dec. 21. 1822, (2. Shaw and Dunlop, Nos. 105. and 106.)

J. Fraser—Spottiswoode and Robertson,—Solicitors.

No. 61.

ALEXANDER GRANT, Solicitor in London, Appellant. *Brougham—Rose.*

JAMES PEDIE, W. S. Respondent.—*Adam—Wilson.*

Jurisdiction—Forum Originis.—The Court of Session having sustained their jurisdiction against a Scotchman domiciled in England ratione originis,—the House of Lords reversed the judgment, and remitted to inquire on what other grounds, appearing on the pleadings, jurisdiction could be sustained, and having regard to a suit depending in Chancery when the summons in Scotland was raised.

Alexander Grant was a Scotchman by birth, but since 1803 had resided in London, and followed the profession of a solicitor there. He had no heritable property in Scotland.

In 1813, he and Malcolm M'Farlane (who soon afterwards died) were appointed trustees, under a disposition and assignation by Francis Allwood, an Englishman, carrying on business as a cotton spinner in Glasgow, of his whole estates, heritable and moveable, (including the estate and effects left to him by a deceased brother Philip), for payment of his, Francis Allwood's, creditors. The disposition was drawn in the Scotch form by a Scotch man of business, but was subscribed by the party and witnesses at Carlisle. It contained a clause of registration in the Scotch form, and the deed was accordingly registered in the books of Council and Session. In the meanwhile, in October 1812, Francis Allwood, and others having an interest under Philip's will, had charged upon their respective interests an annuity in favour of the Rev. Robert Hele Selby Hele, (to whom also Francis granted a separate annuity charged on his individual interest); and intimation thereof was given to Grant in January 1814. Hele then filed a bill in the Court of Chancery in England, and made Grant, Francis Allwood, and Thomas Black,* defendants,—both the two last persons being out of the jurisdiction of the Court. Grant (as he alleged on a consultation with Hele) transmitted to the respondent Pedie the subpœna out of Chancery at Hele's instance, with directions to obtain letters of supplement against Allwood and Black, and received an answer, that the letters had been raised, and had been sent for execution, which, when returned with the messenger's execution, would be retransmitted to Grant. The bill prayed, that the defendants should be required to assent to, or dissent from, a proposed agreement and settlement; if the latter, that 'an account may be taken, 'under the direction of this honourable Court, of what has been 'received by the said Alexander Grant and Malcolm M'Farlane, 'or either of them, as such trustees or trustee, as aforesaid; and 'that, out of what shall be found due upon taking the said ac- 'counts, the arrears due upon said annuities may be paid; and 'that the residue thereof may be paid into the bank, in the name 'of the accountant-general, to the credit of this cause, and may 'be set apart for the purpose of securing to your orator, Robert 'Hele Selby Hele, the future payments of the said annuities;

* Francis Allwood had been sequestrated in 1803, and Black appointed trustee; but it was alleged, that Black had paid the creditors 20s. in the pound.

July 5. 1825. 'and that the moiety of the said annuity of L. 278, and the said 'annuity of L. 40, may be declared to be a charge upon the re-'versionary interest of the said Francis Allwood, in the sum of 'L. 4128. 3s. 2d. 3 per cent Consolidated Bank Annuities, and 'L. 3500 Navy 5 per cents; and that your orator may have 'such further and other relief in the premises as to your Lord-'ship shall seem meet, and the nature of the case may require. 'May it therefore please your Lordship, the premises considered, 'to grant unto your orator his Majesty's most gracious writ or 'writs of subpœna, issuing out under the seal of this honourable 'Court, to be directed to the said Alexander Grant, Thomas 'Black, and Francis Allwood, and the rest of their confederates, 'when discovered, thereby commanding them, personally, to be 'and appear before your Lordship in this honourable Court, and 'then and there, full, true, and perfect answer make to all and 'singular the premises; and farther, to stand to, perform, and 'abide such order and decree therein, as to your Lordship shall 'seem meet.'

William Thomson, ironmonger in Edinburgh, was debtor to the respondent Pedie; and in security of his debt, John Thomson and Company, (the partners of which were William's brothers), being creditors of Allwood for L. 241. 6s. 2d. assigned their claim to Pedie, who intimated the assignation personally to Grant, at that time in Edinburgh. Demand for payment of a dividend on this claim having been unsuccessfully made thereafter upon Grant, Pedie, in order, as he alleged, to constitute his debt, with a view to execute diligence against part of the trust-estate in Scotland, raised, on the 11th April 1821, in the Court of Session, a summons against Grant, concluding for payment of L. 72. 7s. 9½d., being a composition of 6s. per pound on the total debt of L. 241. 6s. 2d. Grant being in London, was edictally cited, by affixing a copy of the summons on the market-cross of Edinburgh, and by intimation being made at the pier and shore of Leith. He entered appearance; and stated in defence, 1st, 'The defender is not 'answerable to the jurisdiction of this Court, having no heritable 'estate situated in Scotland; neither has he a domicile or resi-'dence there. The defender has claims against individuals in 'this country, but the pursuer has not founded a jurisdiction 'against him jurisdictionis fundandæ causa. The action there-'fore falls to be dismissed as incompetent, with expenses. But, '2dly, Although the action was competent, the defender denies 'positively the statement made in the summons. On the con-'trary, the pursuer is in the defender's debt.'

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The Lord Ordinary sustained the jurisdiction, and ordered parties to be heard on the merits; and afterwards adhered, (27th January 1822), 'in respect that it is not denied that the 'defender is a Scotchman, although he has resided for some 'years past in England, and that the contract or obligation 'upon which the action proceeds, took place in Scotland;' and on advising a reclaiming petition and answers, the Court (14th June 1822) adhered, in so far as the interlocutor reclaimed against sustains 'the jurisdiction ratione originis, and the forum 'thereby created;' and found expenses due to the pursuer relative to the discussion of the question of jurisdiction.*

Grant appealed.

Appellant.—The appellant, though a Scotchman born, is domiciled in England, and is resident there animo remanendi: A Scotchman or Englishman out of Scotland, cannot be heard in a Scottish Court as a pursuer, until he has sisted a mandatary; neither can the latter be called as a defender, (he having no heritage in Scotland), unless there has been an arrestment of his moveables in Scotland to found jurisdiction. But it would be an unjust principle to put in a different situation a Scotchman, domiciled animo remanendi out of Scotland. If a Scotchman living out of the jurisdiction is, when claiming a right, placed on the same footing with a foreigner, why should a distinction be taken when they are called as defenders? The most oppressive consequences would result from the rule adopted by the Court below. Under an edictal citation, a decree might be obtained against a party in utter ignorance of its existence, his moveable estate carried off, and his person exposed to imprisonment should he happen to return; and however unjust the claim might be, or whatever might be its amount, no remedy could be had, if the decree were fortified by the lapse of the legal prescription. The ratio of the Lord Ordinary, that the contract took place in Scotland, is not founded on fact. That ratio has been recalled, and there is no case in the books where the mere origin, unaided either by the locality of the contract, or some other circumstance, has been allowed to found jurisdiction; on the contrary, there are various authorities in favour of the appellant's doctrine.

Respondent.—1. A native of Scotland, residing abroad, is not

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* See 1. Shaw and Ballantine, No. 544.

July 5. 1825. regarded as a foreigner; but is liable to the jurisdiction of the Scotch Courts, ratione originis, and his property within their territory is open to attachment by Scotch diligence. This is founded on legal principle, and is settled by all the authorities, and is daily observed in practice. 2. If the forum originis was not sufficient per se to found a jurisdiction, still, as the transaction on which the summons rested took place in Scotland, this, taken in connexion with the forum originis, constitutes jurisdiction.

The House of Lords 'ordered and adjudged, that the interlocutor of the 14th of June 1822 complained of be reversed; and 'it is further ordered, that the cause be remitted back to the 'Court of Session to rehear the reclaiming petition of the 15th 'February 1822, whereby the several interlocutors of the Lord 'Ordinary complained of are submitted to review, for the purpose of the Court's again considering and adjudging whether 'the jurisdiction of the Court can be sustained, according to 'those interlocutors of the Lord Ordinary, upon the grounds 'mentioned in any of them, or on any other grounds appearing 'in the pleadings, other than those founded upon the domicilium 'originis; and having regard to the fact of a suit or suits depending in the Court of Chancery of England, and the period or 'periods of the commencement thereof, if it shall appear that the 'pursuer could therein recover his demand, if he had any just 'demand; and, after such rehearing, to proceed as to such interlocutors of the Lord Ordinary, and in the cause, as is just.'

Lord Chancellor.—My Lords, There is a Scotch cause, upon which I shall take the liberty of troubling your Lordships, with your leave, to-morrow,—the case of Grant v. Pedie, which involves no less a question than whether, if a man is born in Scotland, and he leaves it, and is domiciled out of Scotland, for a period as long as your Lordships please to suppose, he is, merely because he was born in Scotland, to be considered as a Scotchman from the hour of his birth to the day of his death. This is certainly a very important question, if the Court of Session is right in considering that no Scotchman can, as to a suit, change his domicile of origin. Your Lordships are very well aware that there is a law of Scotland, under which, if the defender has a real estate in Scotland, or if he has goods in Scotland, or if a contract upon which a party sues be a contract formed in Scotland, that, following particular forms, those circumstances would undoubtedly give a jurisdiction to the Court of Session. But the question here, unless there are particular circumstances that

I have not yet been able to discover in the case, is really simply of this nature, Whether a person, leaving Scotland (if you please so to state it) in his infancy, still continues, for the purposes of a suit, a Scotchman? And when I say that, perhaps I may take the liberty to suggest to your Lordships, that, since the Unions, we are all Scotch, English, and Irish. There is a mixture of the three national characters in every one of us. There is a little bit of Irish, and a little bit of Scotch, and a little bit of English; and the question is this, Whether a Scotchman may have a judgment pronounced against him in his absence,—being neither represented by his being in Scotland in person himself, nor having any property whatever there, nor having entered into a contract there,—whether, in the course of the proceedings, a judgment may be pronounced against him in Scotland? and whether, having got that judgment against him in Scotland, the pursuer may bring an action on the foundation of that judgment against the party in this country? And that question also arises connected with a very particular circumstance, that there had been already a suit in this country, in which this debt might have been recovered. Under these circumstances, and feeling as one ought to do, that great care should be taken how any judgment is expressed altering any judgment of the Court of Session, I shall, with the leave of the House, draw this up specially, and present it to the House in the course of to-morrow.

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Lord Chancellor.—My Lords, There is a cause which I took the liberty of mentioning to your Lordships on a former occasion, which is the case of Alexander Grant, Esq. a solicitor or agent in London, appellant, and James Pedie, Esq. writer to the signet in Edinburgh, respondent. My Lords, the question in this case is, Whether the Court of Session in Scotland are right (in the judgment of your Lordships) in holding, as they have done in the following interlocutor pronounced by the Lord Ordinary, and confirmed by the Court of Session upon appeal, so far as the same sustains the jurisdiction ratione originis thereby created, that, 'having considered the representation, 'together with the answers thereto, and the whole process, in respect 'that it is not denied that the defender is a Scotchman, although he 'has resided for some years past in England, and that the contract 'or obligation upon which the action proceeds took place in Scotland, 'refuses the representation, and adheres to the former interlocutor 'complained of.' It does not appear that the appellant had any property in Scotland, and it does appear that he has been long domiciled in England; and the question is, Is he, or is he not, now, though born in Scotland, yet ratione originis,—that is, having been born in Scotland,—an object of jurisdiction of the Courts of Scotland? It may be necessary, on account of the great inconvenience, to know whether a man domiciled in England can or cannot be sued in Scotland. The Lord Ordinary does not consider the ratio originis as sufficient, but he states the ground of his judgment, that the contract was made

July 5. 1825. in Scotland. Now I see that it is laid down in books of more or less authority treating upon the law of Scotland, that not only the contract should be made in Scotland, but that the party should be found in Scotland. It is a different thing where there is real property in Scotland, or moveable property, that might be made the ground of jurisdiction—it is very different from a contract merely entered into by a party not resident in Scotland, nor having any heritable estate situated there. But, my Lords, with a view to have this question farther considered, I should propose that your judgment should be to reverse the interlocutor of the 14th June 1822, in so far as the same sustains the jurisdiction ratione originis, and to refer the cause back to the Court of Session, or to the particular Division which pronounced the interlocutor appealed against, and to reconsider the reclaiming petition of June 1822, which had been presented against the interlocutor pronounced by the Lord Ordinary, and which was complained of;—to have it again submitted to their consideration, whether the jurisdiction of the Court can be exercised according to the grounds proceeded on by the Lord Ordinary, or upon any other grounds repelling the defence, or on any other grounds except proceeding upon the ratio originis; having regard to the fact, which appears to me to be a most important consideration, whether there was not one or more suits pending in the Court of Chancery in London, and therefore with a chance of having different suits depending at one and the same time; and it will be necessary to consider the time or period at which such suits were instituted, and whether the pursuer could have recovered his demand by such suit pending; and after such re-hearing, to proceed to make such order as in their wisdom should be deemed just and proper to be made under the circumstances of the case.

Appellant's Authorities.—2. Voet, 1. 48.; 1. Ersk. 2. 16. & 19.; Hogg, June 7. 1791, (4619.); Strother, July 1. 1803, (No. 4. Ap. For. Comp.); Bank of Scotland, Jan. 20. 1813, (F. C.); Brog, March 23. 1639, (4816.); Anderson, July 1747, (4779.); Fairholme, Jan. 31. 1755, (2778.); Brunsdone, Feb. 9. 1789, (4784.); French, June 13. 1800, (No. 1. Ap. For. Comp.); Wyche, June 27. 1801, (No. 2. Ib.); Morecombe, June 27. 1801, (No. 3. Ib.); Edmonstone, Forbes, and Levett, June 1. 1816, (F. C.)

Respondent's Authorities.—Kames' Stat. Law, Hist. Notes, No. 7.; 5. Voet, 1. 91.; Dirleton, 280.; 1. Ersk. 2. 19.; Galbraith, Nov. 15. 1626, (4813.); Balbirnie Feb. 27. 1663, (Ib.); Blantyre, Dec. 8. 1626, (Ib.); Dyell, Feb. 8. 1632, (3714.); Douglas, Feb. 1. 1642, (4816.); Anderson, July 1747, (4779.); Hogg, June 27. 1760, (4780. & 7674.); Fairholme, Jan. 31. 1755, (2778.); Pirie, March 8. 1796, (4594.); Lindsay, Jan. 26. 1807, (No. 6. App. For. Comp.); M'Kenzie, March 8. 1810, (F. C.); Haig, May 26. 1812, (F. C.); 6. Bell on Deeds, 22, 23. 29.; Styles of Jurid. Soc.; Hope's Min. Pr. 14.; Off. of Mess.

KING—J. FRASER,—Solicitors.