

- No 16. title to such goods ; albeit it was *alleged*, that *mobilia sequuntur personam*, and executors find caution, which would be of advantage to creditors.
Fol. Dic. v. 1. p. 318. Harcarse, (AIRE.) No 41. p. 9. (EXECUTRY.) No 453. p. 124.

DIVISION. III.

Of transactions in a Foreign Country, meant to take
Effect in Scotland.

1664. December 8. SCOT in Carlisle *against* HENDERSON and WILSON.

No 17.

A bond was granted by a Scotsman in England, to an Englishman, and registered in Scotland. It was found incompetent to prove by witnesses, that any part of it was paid, though such proof is allowed in England.

RICHARD SCOT having charged Henderson and Wilson upon their bonds, they suspend, and offer them to prove payment of a part, by witnesses, and *allege* that it being the law of England, that witnesses can prove to take away writ, that therefore these bonds being contracted in England, with Englishmen, the suspenders ought to have the same benefit of probation, they would have had, if they had been arrested in England, upon their bonds, or pursued there, and adduced a practick of Durie, in *anno* 1628.

THE LORDS having accurately considered and debated this case among themselves, and finding that *locus contractus*, was in England, but the bonds bore expressly a clause of registration in Scotland ; and that such bonds had been ordinary betwixt merchants in England, and merchants in Scotland ; and in no time such a probation admitted ; and that it would furnish an ordinary delay in such cases, to the disadvantage of merchants, and hindering of trade, by always offering to prove payment in England, by witnesses, which could require long time,

Therefore, they found the reason only probable, *scripto vel juramento*.

Fol. Dic. v. 1. p. 318. Stair, v. 1. p. 236.

* * * Newbyth reports the same case :

RICHARD SCOT, Englishman of Carlisle, pursues two of his debtors in Scotland, for the sum of L. 824 Sterling, conform to their bond subscribed at Carlisle, the time of the dispute. It was *alleged* by the defenders, That they offered them to prove by famous witnesses, that they paid a considerable part of the same in England to the pursuer himself, or others in his name, and which, they contended, ought to be received in this case, the debt being owing to an

Englishman merchant, upon the account of English ware, and the bond subscribed in England; and that if they had been arrested in England by the pursuers, or pursued for the debt, they would have the benefit of proving payment by witnesses. THE LORDS found the allegiance probable only, by writ, or oath of party, and not by witnesses; and declared they would judge so in all time coming, especially the bond being made after the Scots manner.

No 17.

Newbyth, MS. p. 9.

* * * This case is also reported by Gilmour.

RICHARD SCOT, Englishman, indweller in Carlisle, charges John Wilson and John Henderson for L. 324 Sterling, and L. 500 Sterling, contained in their bonds, who suspended upon this reason, that they made payment of a part of the sums to certain persons who were partners with, or factors for the charger, which they offer to prove by their oaths, and by the charger's own count-books. *Answered*, Not relevant to be proven by their oaths, but by the charger's oath only, or by writ; and as to the charger's count-books, he is content to depone there is no such thing in them. It was *replied*, That the charger being an Englishman, living at Carlisle, where the bond was subscribed, he ought to be ruled according to the law of England; and the suspenders offer to prove, that payment was made to the partners, and that they were factors and partners, is probable by witnesses. *Duplied*, That the bond is granted by Scotsmen, appointed to be registrated in Scotland; and being drawn after the Scots form, the reason of suspension is to be decided according to the law of Scotland, which accordingly the LORDS found; and that the reason thereof was only probable by writ, or oath of party; but withal before the charger should depone, he was appointed to exhibit his count-books, to the end inspection might be taken thereof, whether any payment has been made of the sums charged for to him, or others in his name. To which end a commission was granted to some unsuspected persons, both to make inspection in the count-books, and to take his oath also.

Gilmour, No 118. p. 86.

1721. February 14.

NICHOLAS JUNQUET LA PINE, Taylor *against* The Creditors of LORD SEMPLE.

IN the sale of the estate of Semple, a question arose about a bond for L. 900 Scots, granted by the deceased Francis Lord Semple to Nicholas Junquet la Pine, taylor in London, dated at London, 10th November 1699, bearing a consent to registration in the books of the Court of Session in Scotland. And it was *argued* against the bond, for the other Creditors of Semple, That the bond

No 18.

A foreign bond wanting designation of the witnesses, was sustained, though it bore a power to registrate in Scotland, being formal according to the *lex loci*.