

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*.

No 74.

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.