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 allegeance 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.

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*.

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. being registrable in Scotland, framed in the Scots style, and for money of a Scots denomination, and consequently designed only to have execution in Scotland, it ought to be according to the Scots forms, as much as if made in the country; but so it is, that it wants the designation of the witnesses, which is a nullity by the Scots law. It is a rule indeed, that the forms of writs are to be judged by the laws of the place where they are made; because it being understood that execution is to pass there also, the parties are presumed to agree to be determined by the laws of the place: But from the same reason it will be inferred, where execution is expressly agreed to pass in another country than that of the contract, that the laws of that country must take place from the tacit consent of the contractors, equally as there had been an express stipulation to that purpose. And to confirm this pleading, was adduced, Scot *contra* Henderson, No 17. p. 4450; where it was found, 'That a bond made in England, 'but after the Scots form, and registrable in Scotland, was to be judged by the 'law of Scotland, and so not to be taken away by witnesses; and *l.* 21. *obl.* & 'act. *Contraxisse unusquisque in eo loco intelligitur, in quo ut solveret se obligavit.*'

To which it was *answered*, It is very true, every contract and every deed must be judged by the laws and rules agreed to, expressly or tacitly, by the contractors; so that as to the bond in dispute, though good by the English forms, if yet it was the will of the parties, that it should be after the Scots forms, otherwise to have no effect, unquestionably it must fall to the ground, as wanting some necessary solemnities of that law; but the argument fails, in that there is no evidence of such a consent; had it been the design in giving the bond, that Lord Semple should be bound in Scotland, and no where else, the evidence would be clear; but this will never be understood the intention of parties. The rational interpretation of such a transaction can be no other than this: His Lordship was owing to Mr Junquet la Pine the sum of L. 900 Scots, which being an absolute debt, without any qualifications, he was bound to pay it, whenever and wherever demanded; it was but equitable to give the creditor a writ, in evidence of his debt, which should be as little limited in its effects as the obligation to which it related: This he did in the only way it was possible, by making out a bond in the form of the country where it was granted; which as it was *ex vi legis* directly effectual there, so *ex comitate* in every other civilized country; and because the debtor's estate lay in Scotland, and the creditor had greatest expectation of making his payment effectual there, therefore registration was agreed to pass in that country, in order for ready execution, which could not be any where else, but by way of action. If this be a fair view of the matter, no presumption will be inferred from the clause of registration, that the parties designed to regulate this writing by the laws of Scotland; on the contrary, as it was made after the English form, there is the strongest evidence likewise from the nature of the transaction, that it was understood as a valid English obligation; and as it might have been followed forth directly by way of action in that country, our judges *ex comitate* will give it the

same effect here. As to the decision cited on the other side, if they should endeavour to take away this bond by witnesses, the decision will be a standing rule against them; from this principle, whoso subjects himself to an obligation to be performed in a certain place, is *eo ipso* understood to subject himself to the laws of the place, with relation to that obligation; which is, in other words, *Contraxisse unusquisque in eo loco intelligitur, in quo ut solveret se obligavit.* And it is indeed plain enough, the laws where the contract is entered into, and where performance is designed, being repugnant, since both cannot take place, that the laws where performance is designed, should prevail: But upon the first reflection, this will be found to have no relation to the case in hand; for though this bond cannot be liable to be taken away by witnesses, and not taken away at the same time, nothing in nature hinders it, as it truly was designed to be at the same time a binding obligation both in England and Scotland. No 18.

'THE LORDS found, That this bond is null by the law of Scotland; but that a bond granted in England, according to the laws and forms there, is effectual to produce action in Scotland, albeit by the tenor of the bond it does appear that the payment and execution was intended to be in Scotland.'

Fol. Dic. v. 1. *p.* 318. *Rem. Dec. v.* 1. *No* 23. *p.* 51.

DIVISION IV.

The Laws of a foreign State have no coercive force *extra territorium.* Diligence in Scotland upon foreign deeds will be regulated by the Law of Scotland.

SECT. I.

Foreign Assignation.

1708. *July* 22. The EARL of SELKIRK *against* GRAY.

No 19.
In a competition between an arrestment and assigna-

THE Duke of Hamilton being debtor by a double bond, in the English form, to Captain Alexander Gavin, in L. 1030 Sterling, he assigns this to Sir James Gray, by a writ of attorney *in rem suam*, in the English manner; whereon Sir