No 4. of his debtor's effects, wherever they can be found. A decree of the Court of Chancery cannot avail Sir John, to charge the real estate of the Company in Scotland; a decree of the Court of Session is necessary to that end, and both actions may regularly be carried on at the same time. Allowing, therefore, the Court of Chancery to have the radical and original jurisdiction, with respect to this process, and that it can only come before the Session by way of incident, which yet needs not be granted, because *locus rei sitæ* is as proper a foundation of a jurisdiction as *locus contractus;* allowing all this, still what good reason can be assigned for delaying Sir John's incident process here, till the event of that before the Chancery; when, after all, whatever be the judgment of the Chancery, in this country it will neither be a liberation to the defenders, nor a decreet to the pursuer. To the *second* argument, The difficulty of answering to the same process in different countries at the same time, will have thus far an effect, that the defender will be allowed reasonable time to transport the materials of his defence from one place to another. No doubt this creates trouble, but parties must be disquieted till they pay their debts. The argument is of that kind, that by proving too much proves nothing at all; for if that kind of disquiet were a good foundation for the exception of a pendent suit in another kingdom, it ought to be good, not only where a suit was depending in another kingdom, betwixt the same parties in the same cause, but where the defendant was sued upon any ground, or indeed by any person, because it is troublesome to attend suits in different kingdoms; only with this difference, that the same writings, if the subject was the same, and the same witnesses, cannot indeed attend at one and the same time in different kingdoms. But this makes no substantial difference, because this can be supplied by commissions, excerpts, or exemplifications; or, at most, have the effect to procure some reasonable delay, if proof be brought that it is impossible instantly to produce the writs or witnesses before the Court.

"THE LORDS repelled the defence."

Fol. Dic. v. 1. *p.* 551. *Rem. Dec. v.* 1. *No* 101. *p.* 193.

1709. *March* 8. COUTS and Co. *against* CALLIN.

No 5. AN action, for payment of a debt, was brought before the Chancery Court of the Isle of Man, against a person residing there, but who afterwards resided in the kingdom of Ireland.

Having occasionally come into Scotland, the defender was compelled to find caution upon a summary warrant from the Court of Admiralty, and an action brought against him in the Court of Session for the same debt.

Against this action he pleaded the exception of *lis alibi pendens*; in answer to which, reference was made to various cases marked in the Dictionary under

that head; and it was urged, that the defence had always been repelled, when founded upon a suit in a foreign country. No 5.

"THE LORDS repelled the defence, and found the action competent."

Act. *Alex. Gordon.* Alt. *W. Wallace*:

G. F. *Fol. Dic. v.* 3. *p.* 387. *Fac. Col. No* 93. *p.* 346.

1799. *June* 25. EDWARD MAY and ATTORNEY *against* JOHN WHARTON.

No 6.
An Englishman having come to Scotland, after filing a bill in Chancery against a bond granted by him in England, it was found nevertheless to be competent for the creditor to constitute the debt in the Court of Session.

JOHN WHARTON, in 1794, granted to Edward May a bond in the English form for L. 12,000, defeasible on payment of L. 6000, with interest at five per cent.

Both parties were natives of, and resident in England.

In 1795, Mr Wharton filed a bill in Chancery, craving that the bond should be reduced or restricted, in terms of an accounting to be there instituted; and it appeared, that it formed part of a complicated set of money transactions between the parties.

Mr Wharton afterwards came to reside in Scotland, with a view, as was alleged, to the privilege of the sanctuary of Holyroodhouse; and in 1797, Mr May and his attorney raised an action against him on the bond in the Court of Session.

At that time no judgment had been pronounced in Chancery, and it was admitted, that an injunction there, applied for by Mr Wharton, against execution at common law, had not been obtained.

He, however, contended, that the dependence of the Chancery suit was a bar to procedure in the Court of Session, in the circumstances of the present case, where the parties were English, and the decision must depend entirely on English law and English forms, which can be but imperfectly understood in this country; that to proceed in this action would needlessly double litigation, and occasion the risk of contradictory judgments in the two Courts; and that as the bond did not give direct execution at common law in this country as in England, but afforded merely a ground of action, it was competent for this Court to take into view every equitable consideration as to the mode of procedure on it.

Answered; The dependence of a Chancery suit is in no case a bar to procedure in this Court, (See No 2. and No 4. *supra.*) where, even an injunction from Chancery would have been unavailing; and still less in the present, where the defender has failed to obtain one, and it is admitted, that execution would have been competent against him, had he remained in his own country.

THE LORD ORDINARY ordered memorials on this preliminary defence.