

within one year of the offence ; and it was argued, that this limitation must regulate the British statute of the 9th of Queen Anne. The answer was obvious, that however the act of Queen Elisabeth might regulate prosecutions in England, it could have no influence upon the like prosecutions in Scotland ; and so their Lordships determined.

As to the case of Renton *contra* Baillie, as the creditors have not stated the particulars of it, so no answer can be made to it.

The single precedent which can apply to the question in hand, is that of Thomson and Hay *contra* The Earl of Linlithgow ; in opposition to which, the Court has not only a number of cases formerly mentioned, but many others, particularly Philip and Short *contra* Stampfield, No 57. p. 4503. ; Rae *contra* Wright, No 59. p. 4506. ; Fulks *contra* Aikenhead, No 61. p. 4507. ; and Rutherford *contra* Sir James Campbell, No 63. p. 4508.

THE LORDS found, ' That the certificate by the Lord Chancellor produced, does afford a sufficient defence against the debt of L. 218 : 18 Sterling, due by John Galbreath to his brother George, contracted in England ; and therefore repelled the compensation pleaded on said debt.'

Act. *W. Grahame, Lockhart.*

Alt. *J. Dalrymple, Burnet, Ferguson.*

*J. M.*

*Fol. Dic. v. 3. p. 228. Fac. Col. No 92. p. 203.*

1763. *July 22.*

BLACKWOOD *against* CATHCART.

JOHN CATHCART, merchant in London, a bankrupt, having obtained the usual certificate of conformity, was afterwards sued in Scotland by Alexander Blackwood, one of his creditors, who had received his dividend under the commission, but who alleged that Cathcart had been guilty of a fraudulent concealment by not giving up a subject belonging to him in Scotland. The COURT repelled the defence, upon the certificate.

1765. *February 26.*—Upon an appeal this judgment was reversed, as the omission did not appear to be fraudulent.—*See APPENDIX.*

*Fol. Dic. v. 3. p. 228.*

1770. *August 3.*

JEAN COALSTON, Pursuer, *against* ARCHIBALD STEWART, Merchant in Queensferry, Defender.

GEORGE STEWART, the defender's brother, was engaged in trade in London from the year 1737 to the year 1749 ; when, having become bankrupt, a commission was awarded, and a certificate, under that commission, allowed by the Lord Chancellor on the 27th June 1750. George after this went to India,

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The Lord Chancellor's certificate upon an English commission of bank-

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rupt discharges all debts due to persons residing in Scotland, prior to the bankruptcy.

A petition against this judgement, with answers, was not advised upon the general point, the cause having been decided upon a speciality.

where he realized some funds, and died in the year 1758, having, by a testament, bequeathed his whole estate to Archibald Stewart his brother, nominating Andrew Ramsay his administrator.

Ramsay administered accordingly, and remitted the surplus of Stewart's funds to his own agent in London; who gave notice in the public papers, that all who had claims against George Stewart might appear and produce their grounds of debt. Several did appear and demanded payment; but those who were creditors prior to the commission of bankruptcy were allowed nothing, having admitted they were discharged by the certificate; and every thing being settled, Ramsay remitted the balance of the funds to Archibald the testator's brother.

Several years after a demand was made upon the defender by Jean Coalston, sister and executrix of Peter Coalston; who, as the foundation of her claim, produced a promissory note, dated 11th May 1749, by George Stewart to Peter Coalston for L. 23 : 6s.; and of which, as marked on the back, it was admitted that L. 13 had been paid. In an action raised upon this document, the defender *pleaded* in defence the certificate by the Lord Chancellor as a discharge of that note and of all prior debts. As neither of the parties could ascertain whether Peter Coalston had acceded to the commission of bankruptcy and received his dividends, though as Coalston was settled in London at the time of these proceedings, it was probable that he had, the question came to be argued merely upon the effect of an English certificate as to the debt of a creditor claiming in Scotland.

THE LORD ORDINARY having decerned against the defender for payment of the balance of the note, the question was argued in a reclaiming petition and answers, and thereafter, in memorials, on the abstract point—When it was

*Pleaded* for Archibald Stewart the defender; *imo*, Though according to the strictness of municipal law, no obligation had force *extra territorium*, yet, by the universal consent of nations, the *lex loci contractus* was held to regulate as well the constitution as extinction of personal rights. It could not be denied that a contract, executed according to the solemnities of the place, was a good and valid contract; and it was a necessary consequence, according to the principles of the *jus gentium*, that action thereon should be sustained, in whatever part of the world it might come to be considered.

This principle admitted of further illustration; and it had been always held, that the *lex loci* fixed the rule as to the several incidents of the constitution, endurance, transmission, and extinction, of the obligation. Upon that principle accordingly had it been found, that foreign deeds, agreeable to the laws of their country, were sufficient to produce action here. It had also been found, that debts contracted in England, when sued for in Scotland, must, *quoad* their endurance, be governed by the English statutes of limitations. As to transmission also, both legal and voluntary assignees had, even without intimation, been preferred to arresting creditors; because such was the law of England where their debts had been contracted; and, in a variety of cases, particularly in that of

Assignees of Thomson and Tabor *contra* Forrest and Sinclair, No 89. p. 4561., the assignees, under a commission of bankruptcy, had, in virtue of the title conferred on them by the laws of England, been allowed to compete with creditors in this country, though they had no assignation whatever from the bankrupt himself. The same rule held as to the extinction of rights. The statute of limitations had been held a good defence against payment when demanded from the debtor in Scotland; for as the obligation was once extinguished *lege loci*, it could not thereafter be revived and made a ground of action in a different jurisdiction, Macmorland, No 14. p. 4447.

*2do*, These principles were completely sanctioned by practice. A certificate in a commission of bankruptcy was, by the law of England, a *res judicata* against all the creditors whatever; and was therefore a sufficient plea to urge as to the extinction of the debt wherever it might be demanded. This was not a recent point, but had been determined Rothead *contra* Scott, No 94. p. 4566.; Marshall *contra* Yeaman, No 95. p. 4568.; Christie *contra* Straiton, No 96. p. 4569.; Creditors of Galbreath *contra* Galbreath, No 97. p. 4574.; and on an appeal to the House of Lords, Cathcart *contra* Blackwood, No 98. p. 4579.

*Pleaded* for Coalston the pursuer; *imo*, Foreign statutes had no coercive authority *extra territorium*; and though a foreigner, who submitted himself to the terms of a statute, would thereby be deemed bound, and the *exceptio rei judicatae* be everywhere available against him, yet a statutory exception, such as was now pleaded, was, from its nature, necessarily confined to a certain territory, and could never be pleaded beyond the limits of that country where the statute was in force. A statutory exception was very different from the *exceptio rei judicatae*; no exception in this country could arise from any statute that was not either British or Scottish; and though the statute of bankruptcy, and certificate thereby authorised, was sufficient in England to bar action upon the note pursued for, yet in Scotland it could have no force; and as the note was unexceptionable evidence of the debt *jure gentium*, action must be sustained.

Though, according to the defender's argument, the Chancellor's certificate was held to be a *res judicata*, and equivalent to a judgment obtained, it would not, in the present instance, avail. A judgment reversed in one country had no authoritative force in another; it was only *ex comitate* that it was regarded at all; and though a presumption no doubt arose in favour of a foreign decree, that it was just and proper, access was still allowed to shew the reverse. As in no shape, therefore, an English decree was in this country endowed with the force of a *res judicata*, nor could the exception *rei judicatae* arise upon it, far less could this exception be pleaded on the Chancellor's certificate; which could be considered as a statutory exception good in England only, and which could not affect the subjects of any other country whatever; Goddart *contra* Swinton, No 78. p. 4533.; Edwards *contra* Prescott, No 79. p. 4535.; Kinloch *contra* Fullerton, No 22. p. 4456.

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*2do*, A debt, cut off in England by the statute of limitations, was not extinguished by the law of nations; and hence such a debt might accordingly be made effectual in Scotland. The only operation and effect of that statute, *quoad* a debt pursued for in Scotland, was to afford a presumption of payment; which could be defeated by contrary presumptions, and by evidence, shewing, from circumstances, that payment could not be presumed; Rutherford *contra* Campbell, No 63. p. 4508.; Trustees of Renton *contra* Baillie, No 67. p. 4516. If the statute of limitations, therefore, was not understood to be a real discharge of the debt, upon what consideration of law could the statute of bankruptcy have greater force, and be deemed a virtual discharge of a debt confessedly just and unextinguished, by any method of payment known or acknowledged in the law of nations? The decision Rothead *contra* Scott was a special case; the debt pursued for was secured by an English bond; and the judgment accordingly went upon this specialty, that the bond, being in that form, and granted in England, fell to be regulated by the laws of that country.

Their Lordships were a good deal divided; several of them thinking that the statutes of bankruptcy in England could have no effect *extra territorium*; the majority, however, being of opinion that the Chancellor's certificate was a complete discharge everywhere, it was found, 'That, by the proceedings upon the statute of bankruptcy, the pursuer is barred from carrying on this action.'

Coalston gave in a reclaiming petition, which was followed with answers. But, before these came to be advised, and when hearing counsel upon the question, their Lordships took up a suspicion as to the note, which was pasted upon a slip of paper; and having ordered it to be soaked in warm water and taken off, it appeared that two partial payments of L. 14 and L. 8, which came to within a trifle of the amount, had been made. Without therefore giving another judgment upon the general point, the LORDS assoilzied the defender simpliciter, and remitted to the Lord Ordinary to inquire into this gross fraud.

Lord Ordinary, *Auchenleck*.

For Coalston, *Buchan-Hepburn, J. Grant*.

For Stewart, *D. Dalrymple*.

Clerk, *Kirkpatrick*.

R. H.

*Fol. Dic. v. 3. p. 228. Fac. Col. No 40. p. 110.*

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An English certificate of conformity, discharges the bankrupt from English debts.

The price of goods furnished in Scotland to the order of a person in

1792. January 21. ADAM WATSON *against* JAMES RENTON.

IN consequence of a commission sent by Renton, a merchant in Berwick-upon-Tweed, to Watson, a merchant in Dunbar, the latter sold him certain goods, which were delivered at Dunbar to a common carrier employed by Renton to receive them. For a part of the price, Watson drew a bill on Renton, which he accepted, payable in four months at Renton's house in Berwick. The remaining part was to have been paid in ready money.

Before the bill became due, the other sum being likewise unpaid, a commission of bankrupt, under the English statutes, issued against Renton, who ob-