

1779. June 24. JOHN WOOD *against* HELEN GRANGER.

No 77.

The annual-
rent of a debt
contracted
abroad, and
sued for in
this country,
is to be re-
stricted to
the legal rate
of interest
here, though
smaller than
in the *locus*
contractus.

DR JAMES GRANGER, after residing in the island of St Christophers, died there in 1767; upon which his widow and her daughter Helen Granger, came over to England.

In 1772, John Wood merchant in St Christophers obtained a judgment of the Court of King's Bench in that island against Granger's Executors for L. 60 currency, due by Granger to him, with costs. Afterwards Wood brought an action in the Court of Session against Helen Granger, only surviving child of the Doctor, as representing her father, for payment of this sum, with interest, at the rate of St Christophers, from the date of the furnishing; and likewise of the sum of L. 17 as the costs of suit, with interest from the time they were expended.

Pleaded in defence against this action, *imo*, No interest ought to be found due, as none is decreed for by the judgment of the Court at St Christophers, which is the ground of the action. But, at any rate, no higher rate of interest will be allowed than what the law permits to be taken in this country. So it was found, even where the higher interests of the foreign country were stipulated by bond; Savage against Craig, No 76. p. 4530.

2do, Neither are any costs due; for, although the judgment is 'for the sum of L. 60, with costs,' no account was given in, or modified by the Court at St Christophers, and consequently they cannot be decreed for by this Court.

Answered for the pursuer to the first objection; In all countries merchants are entitled to interest *nomine damni* on sums due to them in the course of trade, though not expressly stipulated. It is a consequence of the principles of equity which entitle the merchant to interest, that the law of the country where the debt is contracted, and where it is payable, ought to regulate the interest; for, otherwise, the merchant is overpaid, or not indemnified.

In St Christophers, the interest of money is higher than in this country. The debt in question was contracted and payable in that island. Had it been actually paid, when due, to the pursuer, who resided there, he could have reaped the same advantage from it as the other inhabitants do from money lent out. Consequently, he is not indemnified, unless he is allowed the legal and common rate of interest at St Christophers.

2do, As to the costs, it was said not to be customary for the Court in that island to modify the costs; but a certificate was produced from the solicitor-general there, bearing, that they were charged according to the custom of the place.

THE COURT found 'the defender liable in payment to the pursuer of the sum of L. 60, currency of St Christophers, with the interest thereof at the rate of

this kingdom, from the date of the citation in this process till payment; but found no costs of suit nor expenses due; and decerned.

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Lord Ordinary, *Alva.* Act. *Anstruther.* Alt. *M^cLaurin.* Clerk, *Orme.*
Fac. Col. No 79. p. 153.

DIVISION IX.

Foreign Decrees, and other Judicial acts.

SECT. I.

Actio rei Judicatæ.

1713. December 3. JOHN GODDART against SIR JOHN SWYNTON of that Ilk.

JOHN GODDART having right from Ursilla Goddart his mother, administratrix to the deceased Robert Goddart, her husband, to a judgment obtained by her before the Court of Queen's Bench, against Sir John Swynton, for L. 390 Sterling, besides costs, as having been co-partner with the defunct and other eight merchants in a trading voyage to Guinea, and also cashier of the company who had intromitted with their effects without counting, pursued Sir John before the Session upon the foresaid judgment of the Queen's Bench, as a sufficient probation, and craved the Lords would interpose their authority in order to execution.

Answered for the defender, *imo*, It is neither proven that the pursuer's father was a partner of the company, nor that the defender was their cashier; *2do*, *Esto* these things were proven, the judgment of the Queen's Bench cannot be considered as *res judicata* here; because, *imo*, It was not an ultimate sentence in England, being subject to the review of the Court of Chancery, and the Lords of Session being a supreme court of law and equity here may review it, seeing it were absurd to exclude the defender from his remedy in equity, because the execution happens in this country; for should the Lords of Session confirm the judgment of the Queen's

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A co-partner in a trading company recovered a decree of the Court of King's Bench, against the cashier of the company, for his intromissions. The cashier afterwards residing in Scotland, the Lords allowed execution to pass upon the decree, the pursuer instructing that he was a partner, and that the defender was cashier or intromitter.