

No 107.

*tra* Elliot, *voce* FORUM COMPETENS; Burrough *contra* Grant, No 131. p. 2661; 22d November 1770, Blackstocks *contra* Mackay. See APPENDIX.

*Answered*; It is a mistake to imagine, that an English administrator can only be sued in the prerogative-courts. His authority indeed is derived from thence, as that of a Scots executor is from the Commissaries; but this does not hinder him, any more than it does a Scots executor, from being sued in any of those judicatories where an ordinary action of debt could be brought against him.

If, after taking possession of the whole effects, a Scots executor were to retire to England, justice requires that the obligations he has come under to the creditors and nearest relations of the deceased should accompany him. In the same manner, where an English administrator brings the effects to Scotland, those for whom he is trustee must have a power of suing him here. Indeed it is more necessary in the latter case than in the former, there being no method in the law of England, by which an action can be instituted against a party who is not within the kingdom.

The decisions which have been resorted to must have been founded on specialities which do not here occur; or if they rest on a broader foundation, they are manifestly erroneous. As to the ambiguity of the words used by the testator, that can prove no obstacle to the interposition of the Scots courts, if they be not wholly incompetent, the judges in this country being in the daily use of deciding on the principles of a foreign law, where it is necessary for doing justice to the parties.

Several of the Judges, moved by the former decisions, were at first for dismissing the action. But the judgement of the Court sustaining the jurisdiction, was at length pronounced with considerable unanimity.

THE LORDS sustained the action.

Reporter, Lord Alva. Act. J. W. Murray. Alt. Solicitor-General, Fraser-Tyler.  
Clerk, Gordon.

Fol. Dic. v. 3. p. 230. Fac. Col. No 121. p. 233.

No 108.

Found, that an English administrator having a domicile in Scotland, might be sued in the courts of this country. This judgement was reversed on appeal.

1793. November 19.

DOUGLAS, HERON, and Company *against* The TRUSTEES of ANDREW GRANT.

MR BARON GRANT, on the 16th of May 1772, accepted two bills drawn on him by John Fordyce, payable 65 days after date.

The bills were indorsed to Douglas, Heron, and Company, by whom they were protested on the 23d July 1772, being the last day of grace.

A sequestration having by that time been awarded against Mr Fordyce, these bills were, in August 1772, produced for Douglas, Heron and Company, at a meeting of his creditors, as their grounds of debt.

In 1775, they, in common with Mr Fordyce's other creditors, accepted of a composition, and granted him a discharge.

On the 23d July 1778, a summons was executed against Andrew Grant, as representing his brother the Baron, for payment of the balance still due upon the bills. Andrew Grant died while this action was in dependence, after having conveyed his estate in the West Indies to trustees, by a deed in the English form, upon which they afterwards obtained letters of administration in the Prerogative Court of Canterbury.

In an action brought against the Trustees, who, though they resided chiefly in England, had a domicile in Scotland, they, *inter alia*,

*Pleaded; imo*, The trust-estate is subject to the law of England; the deed is executed in the English form; the trustees have found caution for their intromissions, in the Prerogative-Court, where they are liable to account, and therefore they cannot be sued in this country; Burroughs against Grant, No 131. p. 2661.

*2do*, The bills are prescribed. The sexennial prescription runs from the time when the bills became exigible, *i. e.* from the day of payment; 12 Geo. III. c. 72. § 37. The days of grace were introduced, not for the sake of the debtor in the bill, but in order to regulate questions of recourse; Ersk. b. 3. tit. 2. § 33. Diligence may be raised before the days of grace are elapsed, Charles against Skirving, No 172. p. 1614.; and interest, as well as the six months allowed for registration, run from the day of payment.

*Answered; imo*, The Trustees are personally liable for the debts of the trust-er, to the extent of the funds in their hands. The taking out letters of administration, and finding security, are intended only as an additional safeguard to creditors and others interested in the succession, and the trustees notwithstanding may be prosecuted in any court having jurisdiction over them; Morison against Ker, No 107. p. 4601.

*2do*, The days of grace, or of respite, as they have been sometimes called, have been introduced in favour of the debtor in the bill; Forbes on Bills, p. 140. § 7; Kames, 6th July 1743, Ramsay against Hog, No 140. p. 1564. The last day of grace is uniformly considered by merchants as the period when payment becomes exigible. Thus in an account of bills, payable and receivable, it is always stated as the time when payment is to be made, or received: When payment is made on that day, interest is never demanded; and from it the rates of discounting, or of exchange, are always reckoned. No legal authority warrants diligence against the acceptor before the days of grace are elapsed in this country; and the contrary is established in England; 4th vol. Termly Reports, Hilary term 1791, Brown against Harraden.

THE LORD ORDINARY sustained the plea of prescription.

At advising a reclaiming petition, with answers, the COURT seemed to be of opinion, that to interrupt the sexennial prescription, the action ought to have been commenced within six years from the day of payment.

No 108. THE LORDS, however, 19th February 1793, repelled the plea of prescription, in respect of the claim entered upon the bills in question in Fordyce's sequestration; and repelled also the objection to the competency of the court.

Upon advising a second petition and answers, the COURT, influenced by the understanding and practice of merchants on the subject, found, 'That the time requisite for completing the prescription in question, only began to run from the third or last day of grace, and therefore repelled the plea of prescription.' See PRESCRIPTION.

Lord Ordinary, *Alva.* Act. *Solicitor General Blair, and M. Ross.*  
 Alt. *Tait, John Clerk.* Clerk, *Sinclair.*

*D. D.* *Fol. Dic. v. 3. p. 231. Fac. Col. No. 72. p. 157.*

\* \* \* This cause was appealed :

THE HOUSE OF LORDS, 11th November 1796, ORDERED AND ADJUDGED, That the several interlocutors complained of in the appeal be reversed, except as to so much of the interlocutor of 19th November 1793, as finds, that the time requisite to completing the prescription in question only began to run from the third or last day of grace, and therefore repel the plea of prescription; without prejudice to any claim which Douglas, Heron, and Company may make for payment of the two bills out of the estate of Baron Grant, or out of such part thereof as have come to the hands of Andrew Grant, and for which he ought to have accounted in a suit for carrying into execution the trusts of the will of the said Andrew Grant.

---

## DIVISION X.

### Succession by what Law regulated.

No 109.

Succession to moveables in a foreign country, belonging to a Scotsman residing in Scotland, is regulated by the Scots law.

1744. November 28. BROWN against BROWN.

In September 1743, Captain William Brown of the Scots Royal regiment of foot, son to Adam Brown late Provost of Edinburgh, having died at Edinburgh without issue, and intestate, John Brown, his only surviving brother, confirmed executor to him, and *inter alia* gave up in the inventory certain personal securities which the defunct had occasionally acquired, while the regiment to which he belonged was quartered in Ireland, and which he had along with him at