" that the several interlocutory sentences therein " complained of be affirmed."

1732.

HAMILTON
v.
THE DUTCH EAST INDIA COMPANY, &c.

For Appellants, *P. Yorke, Dun. Forbes, R. Dundas, Ch. Areskine.*
For Respondents, *C. Talbot,* and *Will. Hamilton.*

CAPTAIN ALEXANDER HAMILTON, *Appellant;*
The LORDS DIRECTORS of the DUTCH EAST INDIA COMPANY, and WILLIAM DRUMMOND, their Factor, - - - - - } *Respondents.*

4th April, 1732.

FOREIGN—PROCESS—RES JUDICATA—The final sentence of a competent court in a foreign state, forms a sufficient defence, *exceptione rei judicatæ.*

[Fol. Dict. I. p. 323. Mor. Dict. p. 4548.]

No. 17.

A VESSEL, of which the appellant was a proprietor, was seized by the Dutch East India Company, on a charge of contraband trade, and condemned in the court of Malacca. An appeal was taken to the High Court of Batavia, by which the sentence was affirmed.

1711.

Some years afterwards part of the cargo of a Dutch East India ship, which was wrecked on the

1728.

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coast of Scotland, having been brought into the Court of Admiralty, the appellant arrested the same in the hands of the Court for satisfaction of the damage which he alleged he had suffered by the illegality of the above confiscation. It was objected to this claim; 1st, That the Court of Admiralty had no jurisdiction over the respondents; 2d, That the competent Courts had decided the confiscation to be legal, and that their sentence must be held *res judicata.*

Jan. 23, 1730. The objection to the jurisdiction was repelled in the Court of Admiralty, and does not appear to have been pressed in the appeal. The defence of *res judicata* was likewise repelled by the judge admiral, and a proof allowed to the appellant of certain circumstances relating to the confiscation of his vessel. This judgment was adhered to.

The case was brought under review of the Court of Session by a bill of suspension and action July 24, 1731. of reduction, and upon advising informations and a hearing in presence, the Lords "sustained the "reason of suspension of *res judicata*, and repelled "the objection of incompetency and iniquity." This judgment was adhered to.

The appeal was brought from the interlocutors Entered Jan. 25, 1732. of the 24th and 27th July, and 23d December, 1732.

Pleaded for the Appellant:—No sentence pronounced in one country can be *res judicata* in another, or have any authoritative force; for it is the power of the judge that gives the force of *res judicata* to any decree; but that power or jurisdiction cannot operate beyond his territory, where

the sovereign, who is the fountain of his jurisdiction, has himself no authority; the effect cannot go further than the cause.

It would be of the most dangerous consequence, if it were in the power of the subjects of any other nation, violently to seize the ships of the subjects of Great Britain, without any just cause, and then to shelter themselves under the pretence of *res judicata* by a sentence, pronounced by judges of their own creating, without being able in the least to support the justice of the sentence.

The respondents ought to show the justice of the sentence, for as the foreign Court had no jurisdiction over a British subject, unless he had been guilty of some crime, whereby the ship and cargo were liable to be forfeited; so, in order to found that jurisdiction, they must prove the crime; for if there was no crime, then the Court had no jurisdiction; and if there was no jurisdiction, there can be no plea of *res judicata.*

***Pleaded for the Respondents*:**—The *exceptio rei judicatæ* is absolute and perpetual, according to the uniform doctrine of all lawyers, and is universally allowed in all countries, and by the law of nations to be available in all courts. It is indispensably necessary that this should be held a good plea in all nations, to prevent the innumerable inconveniences that would follow, if a party who has obtained a final sentence in one state, should be liable at the humour of his opponent, to go to a new trial in another, and consequently in *every other* state, where he or any of his effects should happen to be found, and where it may be utterly

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impossible for him to produce the evidence which he previously had to support his case.

Where a sentence in one state has been pronounced, but not executed, and the party in whose favour it is, shall apply to a court in another state, to carry that sentence into execution, there the judge may and ought to inquire and be satisfied as to the justice of the sentence, before he gives his aid to put it in execution within his jurisdiction; but when a sentence has been fully executed, there is no need of preserving the vouchers or evidence, which were the foundation of that sentence; for when a matter has been judicially determined, it is to be presumed it was rightly determined, according to the established maxim, *res judicata pro veritate habetur*.

Judgment April 4, 1732.

After hearing counsel, "it is ordered and adjudged, &c. that the appeal be dismissed, and "that the several interlocutors therein complained "of be, and the same are hereby affirmed."

For Appellant, *C. Talbot, Ro. Dundas, Will. Hamilton.*
For Respondents, *P. Yorke, Dun. Forbes.*