

DIVISION VII.

Prescription, by the Law of which Country regulated.

1664. *November.*GRADEN *against* RAMSAY.

IN an action pursued by Grace Graden, as executrix to John Graden her father, against Dr Ramsay, for payment of a certain sum, contained in a bond made by the said Doctor, and some other persons, to the said deceast John, it was *alleged* by the Doctor, That the bond being subscribed many years ago by the Doctor, and other friends of the Earl of Holderness, a little after his death, and the money truly employed in defraying his funerals, the same was truly paid back by the Earl's executors; though after so long a time the Doctor cannot now instruct the same; but he *alleges*, that the bond can furnish no action against him, because it was granted at the time when both subscriber and receiver of the bond were all living in England, and the bond is dated in England, where the money was received; and therefore, as in England bonds of that antiquity do prescribe, so ought this bond, being now pursued in Scotland. It was *answered*, That the creditors and debtors were all Scotsmen, and the bond drawn after the Scots form, and appointed to be registered and to have execution in Scotland; and therefore it must be ruled according to the law of Scotland.

THE LORDS repelled the allegiance.

Fol. Dic. v. 1. p. 321. Gilmour, No III. p. 82.

No 56.
A bond granted in England being prescribed by the English law, while the parties resided there, was afterwards made the foundation of process in Scotland. The Lords repelled the English prescription, in respect the bond was drawn in the Scots form between Scotsmen, and bore a clause of registration in Scotland.

1695. *January 11.*SUSANNA PHILIPS and JOSEPH SHORT *against* JAMES STAMFIELD of Newmills.

WHITELAW reported Susanna Philips and Joseph Short *contra* James Stamfield of Newmills, on a very nice point. These English merchants had furnished merchant-ware to Sir James Stamfield in 1679. When they now pursue his heir, for constituting the debt, it is *objected*, the debt is prescribed as to the manner of probation by witnesses, not being pursued for within three years after contracting. *Answered*, That being only a local and municipal statute, derogating from the common law of nations, it cannot take place against strangers, and the *consuetudo loci contractus* must be the rule. But England hath no

No 57.
In an action for payment of furnishing made at London, the defence of triennial prescription was repelled.