

No 58.

the benefit of that delay. *2dly*, You could have pursued me within the year upon the other passive titles of behaviour as heir, vitious intromission, &c. *Replied*, A general charge may not be a sufficient interruption, where the party libels more grounds of debt than one; but here the summons contains nothing but this single account of L. 40 Sterling, and so the charge can be applied to no other subject but to this allenary. And as to the *annus deliberandi*, I was not bound to know you were served heir; and the most this argument could operate, was to deduct these months after the service, but *quoad* the months before, they cannot be counted in the prescription. Though these three points were very considerable, and that minority does not stop these shorter prescriptions, yet the Lords repelled them all, and found the account prescribed *quoad* probation by witnesses. See PRESCRIPTION.

*Fountainball, v. 2. p. 454.*

1717. July.

WILLIAM RAE against JANET WRIGHT.

No 59.

A merchant traveller having died in England, his brother intromitted with his effects *sine titulo*, and during the currency of the negative prescription of six years, introduced by the English act of limitation, retired to Scotland. Being sued, his defence was upon the said act of limitation, which the Lords sustained.

JAMES RAE, a merchant traveller, having died in England, his brother Richard, without any warrant, did intromit with his effects: For the equal half of which intromission, his executrix, Janet Wright, being pursued by William Rae, a third brother, her defence was, 'That the intromission having been in England, the action for restoring these effects or value, is prescribed by the running of six years, conform to the English statute of limitation, *cap. 16. Parl. 21. Jacobus I.*'

It was *answered*, That the statute has no place in this case; which must be judged by the Scots law, both parties having been Scotsmen, though sometimes they travelled into England. And *de facto*, before the lapse of six years after Richard's intromissions with what belonged to his brother James, he returned to Dumfries with his effects, and there continued to his death; during which time, the English prescription could neither run in his favours, being out of country, nor against his brother William, who could pursue no where else but in Scotland. Nor does this question fall to be decided by the English law, *ratione contractus*; for here was no written obligation, agreement, or contract betwixt the parties: The ground of the present action, is a plain delict, an injurious and vitious intromission with a defunct's effects; and the case is the same, as if Richard had robbed his brother in France or Holland, and retired with the effects to Scotland, and thereupon pretended to defend himself by foreign laws; and crimes and delicts, and their consequences, are more *juris gentium*, than contracts or obligations, punishable wherever the offenders may be found, *ne maneat impunita*.

*Replied*, It is a rule, that the *locus contractus* is only to be considered, according to the laws of which, action upon the contract falls to be regulated; and

there is the same reason this should hold in facts or deeds, by which obligations are inferred, in law called *quasi contractus*, seeing it is the place where the obligation arises, whatever way contracted, that regulates the matter; and therefore, there is no ground of disparity, though Richard afterwards came home and died in Scotland. The ground of the obligation arose in England; and the statute is not founded upon any personal consideration, has no relation to the person, but to the place alone, where the obligation arises, whether flowing from a true or *quasi contract*. It is of no moment, that Scotsmen may be pursued in Scotland, for delinquencies committed abroad, and that according to the Scots law. Denizens of a country, are still subjected to the criminal laws of their country, wherever they are; but in matter of civil obligations and contracts, nations have gone into this expediency, that the laws of the place where they arise, should regulate their form and matter; and here the action is plainly a civil action for restitution, without any adjected penalty.

No 59.

'THE LORDS found the English prescription took place.'

Act. Sir Ja. Nasmyth.

Alt. Sir Wal. Pringle.

Fol. Dic. v. 1. p. 321. Rem. Dec. v. 1. No 8. p. 16.

1732. July 25. ROGERS against CATHCART and KER.

A SUPERCARGO having borrowed money in Virginia, drew bill on his constituents for the same. In a pursuit upon this bill, after it had lien over for six years, the question occurred, whether the act of limitation comprehending bills, should be the rule, or if the question of prescription should be regulated by the laws of Scotland, the bill being drawn upon Scotsmen residing in Scotland, and payable there. THE LORDS repelled the prescription, and found the law of Scotland must be the rule. See APPENDIX.

No 60.

Fol. Dic. v. 1. p. 322.

1731 November. ASSIGNEES of THOMAS FULKS against AIKENHEAD.

IN a pursuit for an account of drugs furnished from year to year by a druggist at London, to an apothecary at Edinburgh, the LORDS repelled the defence of the triennial prescription, and found that the matter must be regulated by the act of limitation in England, being the *locus contractus*, and not by the act concerning prescription of accmpts made in Scotland. See APPENDIX.

No 61.

Fol. Dic. v. 1. p. 322.