

and they adduced a late decision, the Marchioness of Annandale against her Husband's Creditors*.

No 32.

It was *answered* by the pursuer, to the *first*, That the Company's acts and contracts are as effectual in Scotland as in England : The agents authorised by the directors treat for and in behalf of the Company in Scotland, and have a proper office there ; the Company have purchased a considerable property in Scotland, and thereby are become vassals mediate or immediate of the Crown, and in consequence convenable before the Courts in Scotland, wherever they may happen to reside, and that whether the question immediately concerns their estate in Scotland or not ; otherwise no debt contracted by the Company in England could be recovered upon their estate in Scotland, since decrees in England are no manner of foundation for adjudications, arrestment, or pouding in Scotland.

To the *second* it was *answered*, That the action was not for delivery of stock, but damages for not delivery, which are prestable here ; and though the action were for delivery, yet it might be executed in England, by transferring in the books according to the decree given.

It was *answered* to the *third*, That the Company were pursued, and as a body corporate, in point of suing or being sued, have the same capacity as any person in the realm, and so daily sue and are sued here. As to the case of the Marchioness of Annandale, she was convened as administratrix of a subject of moveables, for which she could only be exonerated in the court where she had found caution to be accountable.

THE LORDS sustained process at the pursuer's instance.

Reporter, Lord Pollock. Act. Dun. Forbes, & Ro. Craigie. Alt. J. Boswell & Will. Grant.
Fol. Dic. v. 3. p. 239. Edgar, p. 137.

1737. November 18.

SIR HUGH DALRYMPLE of North-Berwick against ALEXANDER ROSS Solicitor in London.

No 33.

A PROMISSARY note of L. 200 alleged accepted by a Scots gentleman when abroad, being sent to this country, and payment demanded, the gentleman, by a summary application setting forth, that the person in whose hands it was, and who made the demand, was a London attorney, and about to leave the country, obtained the promissary note to be sequestrated as a forged deed, and thereafter went on in an improbation. Sometime thereafter the attorney made an application to the Court of Session to have the note restored, *alleging*, That he had given his obligation to restore the note, or pay the contents ; and the LORDS, in respect the creditor in the note was not subject to the jurisdiction of thi

* See General List of Names.

No 33.

Court, and that no judicial demand was made thereon to found a jurisdiction, therefore ordained the note to be delivered back to the petitioner. See APPENDIX.

Fol. Dic. v. I. p 328.

1772. August 4.

SAMUEL COLE of Covent-Garden, Mercer, and WILLIAM COLE, Brother of the said Samuel Cole; DANIEL WEST, and Others, all Silk-weavers, or Merchants, in or near London, Creditors of the said Samuel Cole; and JOHN GLOAG Merchant in Edinburgh, their Attorney and Trustee *against* EPHRAIM FLAMMARE and SON, Silk-weavers in London.

No 34.

An Englishman having goods in Scotland, may apply for sequestration under the bankrupt statutes.

SAMUEL COLE had, as a trader, sent James Holling Priest, his clerk, to this country with a quantity of silks, amounting in value to about L. 3000 Sterling; and, shortly thereafter, his brother William Cole came hither in the character of factor, or institor, for disposing of these goods; for which purpose, he hired a ware-room, and obtained a licence to trade in the Cannongate.

Samuel Cole, with a view, as was said, of doing equal justice to all his creditors, wrote the following letter, of date 29th May, to William Cole his brother, and institor in this country: 'Since my last, I hear Mr Flammare is gone, and I suppose is arrived, to attach the goods; a thing I know not whether he had a right to do, without my consent; and I never gave it: On the other hand I committed an act of bankruptcy before he went from London, as will be proved; therefore before you give up the goods, have the opinion of the most able advocate you can. Mr Swinton's brother is one, from whom I will get a letter to morrow on that subject; but, if you have not given up the goods, apply directly.'

Mr Flammare, a creditor of Samuel Cole to the extent of about L. 900 Sterling, upon the day of his arrival in Scotland, viz. May 30th, obtained an Admiral precept against him: and, having arrested the silks which had been sent into Scotland, *jurisdictionis fundandæ causa*, did thereon institute an action against Cole; and upon the dependence, he used arrestments in the hands of the depositaries of the silks; and which, on the 2d June thereafter, were sequestrated and inventoried by order of the judge-admiral, before whom the action was brought.

On the 3d June, William Cole, brother to Samuel Cole, attached the silks also by arrestment, for payment of a promissory-note owing by his brother; and on the 16th June, the other parties, all English creditors, likewise used arrestments for attaching these silks.

While matters were in this state, a petition was presented to the Court of Session, in name of Samuel Cole himself, and of William Cole, brother of the said Samuel Cole, Daniel West, &c. (the other creditors of Samuel Cole above