

No 71.

This point ought to be considered as at rest. In a late case, Randal *contra* Innes, No 70. p. 4520, it had been found that the triennial prescription applied to debts contracted in England. This decision had been given upon the abstract point; and as to the alleged specialty, if it really in that case had any influence, it must be equally effectual here, as both the late and present Earls of Home, by being Scotsmen, and having estates in Scotland, were at all times amenable to the courts of this country.

It was *observed* upon the Bench, that when a creditor comes to sue in any country, he must be able to state that, according to the law of that country the debt is subsisting; which the pursuer in this case could not do.

THE LORDS, February 20. 1771, sustained the defence; but in doing so were a good deal moved by the defender's having a house in Scotland, which fixed a domicile, and rendered him amenable to the courts of this country.

Lord Ordinary, *Justice-Clerk*.
Clerk, *Ross*.

For Mrs Kerr, *Macqueen*.
For Earl of Home, *Rae*.

R: H.

Fac. Col. No 80. p. 234.

1772. February 4.

BRYAN BARRET of London, Laceman, *against* ALEXANDER EARL OF HOME.

No 72.
Found as
above.

BARRET sued the Earl of Home, as representing his brother, the late Earl, *inter alia*, for furnishings made to him between the years 1752 and 1759, conform to an account produced, amounting to L. 114; 4; 1 Sterling; during the currency of which account, the deceased Earl had resided in London, and the different articles were there delivered to him.

The defender *pleaded*, That this debt was cut off by the triennial prescription; and cited the decisions in the case of Randal against Innes, No 70. p. 4520, and in the question between himself and Mrs Jean Kerr, on this very point, No 71. p. 4522.

THE LORDS sustained the defence of prescription pleaded against the account libelled, and assoilzied the defender from the conclusions of the libel as to said account.

Act. *W. M'Kensie*.Alt. *Rae*.Clerk *Ross*.*Fol. Dic. v. 3. p. 220. Fac. Col. No 3. p. 4.*