No 32. tainly just that in them, as well as in more acute distempers, the sick should enjoy the benignity of the law.

The Lord Ordinary sustained the above mentioned claim of preference; and

The Lords adhered to the interlocutor of the Lord Ordinary.

In a reclaiming petition Mr Lawson farther *argued*, That the debt having been contracted in England, it ought to be judged of by the law of that country; and as there it was no wise privileged, so neither was any preference due to it here. To this plea Mr Maxwell *answered*, that it was difficult to conceive why a person should have forfeited the protection of the law of this country, merely by going into our neighbouring one, and for the most necessary of all causes too, the recovery of his health; and yet that this consequence seemed to be implied in depriving him, on that account alone, of so very important a privilege.

On advising that reclaiming petition with the answers, in which the foregoing arguments were likewise repeated,

The Court, without paying more regard than before to the above argument about death-bed, seemed to alter their opinion of the point formerly determined. All the Judges now considered that, besides what results from the incapacity of the patient, there should be some other limitation of the period during which surgeons' accounts are to be deemed privileged. Some of them, however, thought it might be allowed to extend to many months; others mentioned three or four months; and some viewed even 60 days as a proper period, though not from its having any relation to the law of death-bed.

The argument founded on the *lex loci contractus* seemed to be unanimously adopted by the Court.

The Lords therefore altered their former interlocutor, and rejected the claim of preference. *See* Privileged Debt.

Lord Ordinary, *Ankerville.* For Lawson, *Corbet.* Alt. *Dalzell.* Clerk, *Orme.*

Fol. Dic. v. 3. *p.* 221. *Fac. Col. No* 146. *p.* 227.

1789. *December* 1. Creditors of Alexander Gray *against* Robert Grant.

No 33.
In a process before the Court of Session, respecting a debt contracted in England, parole proof was found inadmissible, tho', by the law of England, it is admissible in all cases.

Alexander Gray having succeeded as heir to his brother John Gray, a claim was made in the ranking of Alexander's Creditors after his death, for Robert Grant, on account of certain sums of money paid by him in London to John Grant, brother to William Grant of Quebec. The payments were made, it was said, in consequence of a letter of guarantee by John Gray, in which he engaged himself as surety for repayment of the money which Robert should advance 'for fitting out John Grant to India, and as the price of goods which the 'latter had carried out to Quebec in the preceding year.'

In a process of constitution against the Representatives of Alexander Gray, Robert Grant, in proof of his account of the money so advanced in London,

had previously produced two witnesses, one of whom, as it appeared from his testimony, had an active hand in the transaction, and in the absence of John Gray had, as his attorney, settled the account with Robert Grant; and both he and the other witness, who likewise swore to a complete cause of knowledge, verified the claim to its full amount. The former witness too mentioned, that John Gray had in several letters explicitly approved of the payments made to John Grant, and that he gave those letters to Alexander Gray for his information, who never returned them. No 34.

Though decree was obtained in that action, yet being *res inter alios acta*, it could have no effect against the creditors; and besides, the process was so far irregular that it was not preceded by a general charge.

The Creditors farther *objected*, That parole-evidence was in this case altogether inadmissible; for that in order to support the allegation of the payment of money, some written document was necessary: but here the only writing was the letter of guarantee, which, though it might authorise a payment to the extent of a reasonable allowance for an outfit to India, and of the other article mentioned, afforded no sanction to the remainder of the account to a far greater amount, even if the payment had been established.

To this, so far as respected the proof of payment, the answer was, That the evidence brought would have been fully sufficient in England, which was the *locus contractus*, parole-proof of the payment of money being there admitted in all cases; and therefore it ought to be equally received in this country, when the validity of the English contract comes to be tried here.

It was likewise *objected*, that the process of constitution not having been raised until more than six years had elapsed after the money was all advanced, the claim was precluded by the English sexennial limitation; as it was also by the Scotch triennial prescription, which, after the death of John Gray, had run against Alexander while in Scotland.

The answer, however, seemed satisfactory, that William Grant in Quebec was the heir of John Grant the debtor, and against him neither the English nor Scotch prescription could run; and the debt thus preserved against the principal debtor, subsisted equally against the co-obligant John Gray and his representatives.

The Court, on the report of the Lord Ordinary, pronounced this interlocutor:

'Repel the plea of a *res judicata* stated for Robert Grant; also repel the objections stated by the Creditors of Alexander Gray to the debt in question, founded upon the statutes of limitations in England, and upon the triennial prescription in Scotland: Find, That the claim of the said Robert Grant upon the letter of guarantee from John Gray now deceased, can only extend to the sums which John Grant had occasion for to fit him out for the East Indies, and to the payment of sundry goods carried out to Quebec the year preceding the letter of guarantee for account of William Grant: Find, That the claim made

No 34. by the said Robert Grant cannot be supported by parole-evidence; and therefore that the proof founded upon by him in support of his said claim, is neither competent nor relevant, and refuse to sustain the same.'

Reporter, *Lord Stonefield.* For the Creditors, *Murray.* Act. *Buchan-Hepburn.* Clerk, *Mitchelson.*

Fac. Col. No 94. *p.* 170.

1790. *December* 10.

No 35. ARCHIBALD GOVAN and his ATTORNEY *against* SPENCER BOYD.

JAMES BOYD of Pinkell, by a deed executed in North America, obliged himself to convey the lands of Pinkell in Scotland to Carter Bruxton for a price agreed on. An action was brought in the Court of Session against Spencer Boyd the heir of James, to implement that deed.

THE LORD ORDINARY found, that the personal obligation to convey the lands, was obligatory upon the party and his heir, and must be actionable in Scotland.

Effect was afterwards, by the Court, refused to the deed, because it had been procured by fraud, but the principle was acknowledged, that an obligation to convey land, executed in a foreign country, agreeable to the laws of that country, ought to afford action here to force implement of the obligation.

Lord Ordinary, *Ankerville.* Act. *W. Millar.* Agent, *J. Marshall.*
Alt. *Robert Blair.* Agent, *A. Blane.* Clerk, *Home.*

1792. *January* 21. ROBERT ARMOUR *against* JOHN CAMPBELL.

No 36.
A bill being drawn in a foreign state on a person in Scotland, though not accepted, creates a debt, which is held not to be a foreign, but a Scotch one.

CAMPBELL, a Scotsman, who was settled as a merchant at New York, became indebted to Armour in the course of trade. Towards payment of a part of the debt, Campbell drew a bill on his father at Greenock, payable to Armour, which, however, was not accepted.

Soon afterwards Campbell became bankrupt, and, by the law of that state, obtained a statutory discharge, similar to that resulting from the certificate of conformity in England.

On his returning to Scotland, personal diligence was raised against him upon the bill, which he brought under suspension, on the ground of the claim being extinguished by the act of the *lex loci* above mentioned. This plea gave occasion to the same sort of discussion as occurred in the case of Watson *contra* Renton, Div. 9. Sec. 5. *h. t.*