

given by the appellants, allowing the said 707l. 12s. 10d. be affirmed.

For Appellants, P. Yorke. Ro. Dundas.  
For Respondent, Will. Frazer. C. Talbot.

The Governor and Company of Undertakers for raising Thames Water in York Buildings, - - -

John Haldane, Esq; - - -

*Appellants ;*  
*Respondent.*

Case 120,  
Edgar,  
29 Dec.  
1724.

14th April 1725.

*Jurisdiction.*—The York Buildings Company, which had purchased large estates in Scotland, was liable to be sued in that country, in a personal action relative to a transfer of stock, though such transfer could only be made in London.

IN February 1724, the respondent brought an action against the appellants before the Court of Session, setting forth, that in the month of June 1720, the respondent having occasion for money at London, borrowed 3000l. sterling from the appellants, and as a security for re-payment of the same, caused one Gibson, who held stock in his name in trust for the respondent, to transfer 6000l. of the appellants' capital stock, into the hands of the appellants, pursuant to their public advertisements at that time for lending of money for a month :

That the respondent being obliged to go to Scotland before the 21st of July, the day when the 3000l. became payable, made a proposal to the appellants to pay the same to their agents in Scotland, the 6000l. stock being to be retransferred to his trustee by the appellants ; which being agreed to, a bill was drawn on the respondent, dated 21st July 1720, for 3147l. 18s. 10d. payable to the appellants' agents at 14 days' sight, which the respondent accepted on the 27th of July at Edinburgh, and duly paid on the 10th of August following :

That this payment being made, and the conditions on the respondent's part fully performed, upon the faith and belief that the 6000l. stock, pledged with the appellants, was by them retransferred to him or his trustee ; the respondent conceived that he had no more to do, but to order the same to be sold as his occasions required ; but instead thereof, and when the respondent ordered the same to be sold at 150 per cent. (which price that stock yielded after the said 10th of August) he found no stock in his or his said agent's name, in the appellant's books ; but that the same was disposed of to the use of the appellants :

That after many fruitless applications on the respondent's part, to have justice done him in an amicable way, he was at last obliged

obliged to bring the present action: and he concluded, that the appellants ought to be found liable to pay 9000*l.* to the respondent, being the value which the said 6000*l.* capital stock would have yielded, had justice been timeously done to him in retransferring the said pledge, and if the same had been sold as he intended and directed.

The appellants state, that though they had a very good and proper defence against the said demand, had it been thought adviseable to enter into the merits of the cause in the Court of Session; yet they, conceiving that an action of this nature could not be brought against them in the said Court, gave in a declination of the jurisdiction; and insisted that the appellants did not reside within the jurisdiction of that Court, but had their residence at London, and were thereby subject to the English courts; and that if the respondent had any demand against them, he must sue them in England; especially since the demand in the present case was for an account of the transfers of their stock.

In answer the respondent contended, that the appellants were capable of acting in Scotland; that they had purchased considerable estates there; and so were subject to the jurisdiction of the Scotch courts.

This cause being heard before the Lord Ordinary on the 16th of July 1724, his lordship, by interlocutor of that date, took it to report to the whole Court. Having reported the same accordingly, the Court, after advising mutual informations for the parties, on the 29th of December 1724, "Sustained process at the respondent's instance against the appellants." And upon advising a reclaiming petition presented by the appellants, the Court, on the 16th of January 1725, "refused the desire of the petition, and adhered to their former interlocutor."

The appeal was brought from "two interlocutory sentences of the Lords of Session, made the 29th of December 1724 and 16th of January 1725."

Entered,  
5 Feb.  
1724-5.

*Heads of the Appellants' Argument.*

This action was not proper to be sued against the appellants in the Court of Session, the appellants being a body corporate, and subsisting in England, whereby they were subject to another jurisdiction; and this the more especially since the respondent makes his own case to be that the money was borrowed at London; and that the security given was by a transfer of stock in the books of the York Buildings Company, which are kept at London, and, by the constitution of the company, are necessarily kept there. The present demand of the appellant is not relating to any estate or effects belonging to the appellants in Scotland, nor an action immediately to affect, by way of execution, any such estate; but merely a personal action for constituting a debt alleged to arise from a complicated transaction in another country: and the appellants conceive that such action ought regularly to be sued before the judge of the place of their residence, or where the cause of action arises.

Though the company have agents in Scotland for their lands there, yet they have no office in that country for transferring stocks, about which the present question is; nor can they do any act in Scotland in relation to stock. The company having purchased estates in Scotland no doubt subjects them to the jurisdiction of the courts there in all actions relating to these estates; but not to any personal demand against them, especially such as the present case. Where a debt is liquidated against the appellants, they may be sued in Scotland, so as to make that debt a charge upon their lands in that country; because an estate cannot be charged but by some jurisdiction to which it is subject; yet the present case is very different, for it is to commence a personal action to have the appellants found liable in a debt, which has not hitherto in any manner been established.

The incorporation of the York Buildings Company, and the directions relative to the management of their affairs, are by act of parliament; and they are limited to meet and transact their business in or near York Buildings: and though, under the sanction and encouragement of divers acts of parliament, they have become purchasers of the greatest part of the forfeited estates in North Britain, by which the public has received great benefit; yet if it could have been apprehended, that such purchases in that part of the kingdom, would have subjected their transactions at London, relating to loans of money and transfers of stock, to suits and actions in the courts of judicature in Scotland to be commenced there by any one at pleasure, the appellants conceive that it cannot be reasonably supposed, that they, or any other corporation in South Britain, would have engaged in any such purchases.

But since the courts in England are open, since the transaction was in England, and the respondent now resides there, if he have any just demand, no doubt he will procure satisfaction in the courts in *Westminster-hall*; and the appellants submit to answer any demand he has against them in any of those courts: but they hope that they shall not be obliged to answer in Scotland for transactions concerning transfers of stock at London.

#### *Heads of the Respondent's Argument.*

Though the appellants have their chief residence in England, yet they are proprietors of a very great landed estate in Scotland; in virtue whereof, they are subjects and vassals of the crown of Scotland, and, as such, liable to all the consequences in point of jurisdiction, that attend such vassalage. By the constitution of Scotland, all the vassals of the crown are liable to give suit and presence to the king in his courts, either by themselves personally, or by their attornies; and to answer to such matters and things as lawfully can be charged upon or brought against them. Though such vassal may happen in fact to be out of the realm, yet he is understood in the eye of the law, to have  
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left his procurator or attorney within Scotland: and hence it is, that though a vassal be actually absent from the realm, he is amenable to the king's courts by a particular summons at the market-cross of Edinburgh and pier and shore of Leith, as much as if he were at the time present within the kingdom.

If the appellants admit, as needs they must, that though absent from Scotland, they are as much subject to the summons of the king's courts there, as if they were actually present, because they are vassals to the crown in that kingdom; then the distinction betwixt real and personal actions is vain; because, being subject to the jurisdiction, and actually sited in judgment in a legal way, they cannot refuse to plead to any just demand that is brought against them: nor is it possible to affect their real estate, which they admit ought to be affected, for their debts, until the debt be established by a personal action in the courts in Scotland. For, though the debt in question were constituted and established by a judgment of any of the king's courts in England, that judgment could not legally produce any execution against the real estate of the appellants in Scotland; nor could their real estate there be affected in consequence of that judgment, without previously recovering a fresh decree of constitution in Scotland upon a summons, such as is the foundation of the present suit.

Nor will the suing the appellants in Scotland put them under the necessity of transporting their books, minutes, officers necessary to give evidence, and accounts into that country; for, by the course of proceeding in the Court of Session, witnesses may be and are daily examined by commission in England, and extracts and abstracts of books are taken.

After hearing counsel, *It is ordered and adjudged, that the petition and appeal be dismissed, and that the interlocutors therein complained of be affirmed:*

For Appellants,	<i>P. Yorke.</i>	<i>C. Wearg.</i>
For Respondent,	<i>Dun. Forbes.</i>	<i>C. Talbot.</i>

Judgment,  
14 April  
1725.