

No 82. upon absents by the English law ; but thereafter he withdrew, and the decree is marked to be pronounced, none appearing for the defendant.

It was *replied* for the Earl ; That *esto* the decree could be reviewed, the same behoved to be reviewed, either in England, or according to the laws of England, where the jurisdiction being once established, the law of that nation behoved to regulate the sentence ; and the Earl would not decline that the sentence should be reviewed, and any new allegation judged according to the laws of England.

It was *duplied* ; That the Lords could only judge according to the laws of Scotland ; especially in a case that had been stated before the Chancery, which is judged according to the rules of equity, in which the Lords could not be regulated by the opinion or apprehension of the Chancellor of England.

' THE LORDS adhered to their former interlocutor, and found the decree of the Chancery reviewable.' In which it is specially to be noticed, that the complaint before the Chancery was raised at the instance of the Earl, granter of the bond, after the Scots form, and bearing registration here ; and it did not appear reasonable that the Earl could deprive Sir John, the creditor, of the benefit of the law of this nation, notwithstanding that he did once compear ; but, if Sir John, the creditor, had provoked to judgment before the Chancery, it is like the Lords would not have found the decree reviewable at his instance, who had made election of the judicature. And the interlocutor did very well consist ; for the residence of both parties in England, above a year, did establish a competency, yet the debtor's provoking to judgment in England was not found to exclude the creditor from the benefit of the law of this nation.

*Dalrymple, No 1. p. 1.*

1731. July 24. HAMILTON *against* DUTCH EAST INDIA COMPANY.

No 83.

CAPTAIN HAMILTON having arrested the effects of the Dutch East India Company *jurisdictionis fundandæ gratia*, brought an action against the Company for damages alleged sustained by him, through the violent seizure and confiscation of a ship and cargo belonging to him in the East Indies. The defence was, that the ship and cargo in question were, in due course of law, condemned, and confiscated in the council of justice of Malacca, which, upon Captain Hamilton's appeal, was confirmed by the council of justice at Batavia ; and, therefore, they are safe *exceptione rei judicatæ*. Which exception the LORDS sustained. See APPENDIX.

*Fol. Dic. v. 1. p. 323.*