

The error of this omission was afterwards seen ; and therefore it was remedied by another statute, to wit, *4to Annæ, cap. 16. § 19.* in which it was enacted, ' That if any person against whom there is any action of account, or upon the case, or of debt, grounded upon any lending, &c. be, at the time of any such cause of suit or action given or accrued, beyond the sea ; that then such person who is entitled to any such suit or action shall be at liberty to bring the said action against such person or persons, after their return home from beyond the seas, within such times as are respectively limited for the bringing of the said action by this act, and by the act made in the 21st of James VI.'

From which it is as plain as the words of the statute can make it, that, since the defender, after accepting the bill in question, went beyond seas from Ireland into Scotland, and was not constantly in Ireland six years after returning into it from beyond seas again, that he falls under the exception of this last statute, which saves the prescription where the defendant has not been six years in Ireland after returning from beyond seas.

' THE LORDS found, That action lay on the bill.'

Act. *J. Dalrymple.*

Alt. *Hamilton-Gordon.*

Clerk, *Forbes.*

*J. M.*

*Fol. Dic. v. 3. p. 220. Fac. Col. No 26. p 52.*

1767. February 14. WILLIAM EWART against JOHN GOURLAY.

JOHN, an Englishman, having become indebted to William, in the year 1757, in a sum of money paid by him for John, he, William, in 1765, obtained a border-warrant from the Sheriff of Berwickshire, and did arrest the person of John, who found caution *judicio sisti et judicatum solvi.*

William thereafter insisted in an action against him and his cautioner for payment.

*Pleaded* in defence, That this debt having been contracted in England, fell to be regulated by the laws of England ; and, if so, it was cut off by the statute of limitations, 21st Ja. I. cap. 16. *2do*, The defender condescended upon certain circumstances, from which he argued, that a clearance had been made, and the debt discharged.

The Sheriff found it presumed, ' That there had been a total clearance betwixt the pursuer and defender ; and therefore found the action not relevant, after so great a distance of time, unless instructed by writ, or the defender's oath.'

The cause was brought before the Court of Session by advocacy, in which it was *argued*, That the defender could not avail himself of the defence founded on the statute of limitations, in respect the pursuer offered to prove, by sundry witnesses, that the defender had acknowledged the debt within the years of prescription, which, it was said, by the authority of all the English

No 68.

No 69.

In an action brought for payment of a debt, the defence of prescription, founded on the statute of limitations, was eluded by an offer to prove a promise of payment by witnesses, within the years of prescription.

No 69. lawyers, particularly Bacon, title Limitation of Actions, Salkeld's Reports, vol. I. p. 28, 29, &c. revived the debt, even after the years of prescription were run; and if so, *multo magis* if within the years of prescription.

*Answered*, That although the English lawyers lay it down as a principle, that a promise of payment, if proved, bars the defence founded on the statute, yet none of them insinuate that such promise can be proved by witnesses; and, therefore it was rather to be presumed that such proof was not competent, which is undoubtedly the case, by the Scots law, and ought to be held as law in the present question, more especially as the promises are said to have been made in Scotland, where an allegiance of this sort can only be proved by writ or oath of party.

'THE LORDS remitted the cause to the Sheriff, with an instruction to allow a proof of the defender's promise of payment, by witnesses.'

Act. Dickson.

Alt. P. Murray.

*J. S. tertius.*

*Fac. Col. No 60. p. 104.*

1768. July 13.

JOHN RANDAL Taylor in Woolwich, and CORNELIUS ELLIOT Writer to the Signet, his Attorney *against* ALEXANDER and GEORGE INNES, Executors of the deceased Captain PETER INNES, late of the Train of Artillery.

No 70.

A person to whom furnishings were made in England came immediately thereafter to Scotland, where he resided till his death. In an action against his representatives, the defence of triennial prescription was sustained.

CAPTAIN Peter Innes of the royal train of Artillery, in the course of his service, frequently resided at Woolwich in England, particularly he was there in the years 1757, 1758, and 1759. He came to Scotland in October 1759, where he resided till his death, which happened in March 1765.

After Captain Innes's death, John Randal, taylor in Woolwich, brought an action before the Court of Session, against Alexander and George Innes, as executors to Captain Innes, for payment of an account, commencing the 8th January 1757, and ending 22d March 1760. Against this claim, the defenders objected prescription, both upon the English statute of limitations, and upon the triennial prescription introduced by act 83d, parliament 1579. Lord Auchinleck reported the question to the Court, when additional memorials were ordered, a doubt having arisen how far the triennial prescription could be applied to a debt contracted in England.

*Pleaded* for Randal; Though it, in general, is true, that municipal laws are only binding within the territory of that state by which they are enacted; yet, in particular cases, the law of foreign nations is received, and deeds, executed in other countries, are sustained, if executed agreeable to the law of the country where dated, though defective in the solemnities required by the law of the country where they are made the ground of action. And, in Scotland, deeds exe-