

And on advising mutual reclaiming petitions, the Court "adhered."

* * * On appeal, the House of Lords affirmed the interlocutors, in so far as they repelled the defence of prescription; but remitted "to the Court of Session to reconsider so much of their interlocutor of 18th December, as sustains the defence of prescription, pleaded by the defender against a general accounting; and so much of their interlocutor of the 27th May 1800, as adheres to their interlocutor reclaimed against, so far as such adherence sustains such defence against a general accounting." The judgment likewise contained findings on other points, of no general importance, and not mentioned in the report.

Lord Ordinary, *Stonfield.*

Act. Solicitor-General *Blair, Hope, Monypenny.*

Alt. *H. Erskine, Mat. Ross, Ar. Campbell.*

Clerk, *Home.*

R. D.

Fac. Coll. No. 180. p. 408.

1800. December 11.

JOHN BOOG and Attorney, *against* The COMMON AGENT in the Ranking of MARGARET WATT'S CREDITORS.

NO. 5.

DANIEL MORGAN was by birth a Scotsman, and resided mostly in Scotland till the end of the year 1790, when his affairs having gone into disorder, he went to London with the view of bettering his fortune; got the appointment of steward to an East India ship; but died on his passage to India.

The triennial prescription found not to apply to a debt contracted in England, by a Scotsman who never returned to Scotland, but who left his wife, and had heritable property there, at his death.

On the 14th December 1790, while Morgan was in London, he purchased, on credit, from John Boog, goods to the value of L. 41, 14 s. Morgan never returned to Scotland after making this purchase.

Before leaving Scotland, he had executed a settlement of some heritable property in favour of his wife Margaret Watt, burdened with the payment of all his debts.

On the 13th January 1795, Boog obtained a decree in absence, before the Court of Session, against Margaret Watt, as representing her husband, for payment of the L. 41, 14 s. More than three years had elapsed from the date of the furnishings before the date of citation in this action.

Margaret Watt's affairs having also become embarrassed, a ranking and sale of her heritable property was brought, in which Boog having produced the decree in absence as his interest, the common agent objected, that the claim on which the decree proceeded had fallen under the triennial prescription established by 1579, c. 83. And further,

NO. 5. Pleadèd : A debtor can be sued only before those courts to whose jurisdiction he is subject, and judges must decide according to their own municipal laws. Now, Morgan never acquired a domicile in any other country but Scotland, and therefore his debts by open account, wherever contracted, must be subject to the Scots triennial prescription ; 7th July 1755, Trustees of Renton, No. 67. p. 4516. ; 13th July 1768, Randall No. 70. p. 4520. ; 4th February 1772, Barret against the Earl of Home, No. 72. p. 4524.

Answered : Had Morgan returned to Scotland after contracting the debt and remained there three years, the objection might be well founded ; but as he was never afterwards in Scotland, the substance of the debt must depend on the *lex contractus*. If Morgan had been cited *intra territorium* of the Courts of England, he must have submitted to the English law, and he must also have done so had he arrived in India, where the same law prevails, at least among British subjects. It is absurd to suppose, that an English merchant, under the present circumstances, should lose his debt, because he was ignorant of the Scots triennial prescription ; Ersk. B. 3. Tit. 7. § 48. ; 14th February 1792, York-Buildings Company against Chesswell, No. 74. p. 4528.

The Lord Ordinary "sustained the objection."

On advising a reclaiming petition, with answers, it was

Observed on the Bench : To give room for the operation of the Scots prescription, the debtor must have an actual residence in Scotland for three years subsequent to the contraction of the debt : Morgan in this case had only a *forum*. The flaw in the objector's reasoning arises from his not attending to this distinction. It seems extremely doubtful whether the case of Barret against the Earl of Home was well decided.

The Lords, by a great majority, altered the interlocutor of the Lord Ordinary, and repelled the objection.

Lord Ordinary *Balmuto*.
Clerk, *Menzies*.

For Common Agent, *Williamson*.

Alt. *Semple*.

R. D.

Fac. Coll. No. 206. p. 474.

1807. February 19. MACDOWALL against MACLURG AND ANOTHER.

NO. 6.
The triennial prescription found not applicable to

IN the year 1784, Janet Macmillan bore a natural child to James Mac-lurg, who immediately went to Jamaica, where he acquired some money and died there in 1796, naming two executors, with directions to pay some