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to the point whether these buildings placed a greater weight on the wall than the old buildings did. The judgment however may be affirmed with a qualification as to that.

It having been intimated to the House on behalf of the parties, that they did not wish that the point as to the weight on the wall should be noticed, the judgment was simply AFFIRMED.

SCOTLAND.

APPEAL FROM THE COURT OF SESSION.

CAMBPELL and another—*Appellants.*
STEIN—*Respondent.*

March 2, 16, June 5, 1818.

SOLICITOR.—PRESCRIPTION.—SHIP'S HUSBAND.—SHIP REGISTRY.

SOLICITOR in London brings his action against his debtor in Scotland for costs incurred in the conduct of an appeal in Dom. Proc.

The action, in which the costs were incurred, was originally brought in the Admiralty Court to recover the amount insured upon salvage for a recapture made by the ship Diana, of which Yelton, Ogilvie, and Stein, the Respondent, were the owners; Stein being however one of the registered owners only for security of a debt due to him from Ogilvie. Pending the suit before the Judge Admiral the Diana was sold, and the debt paid to Stein. Stein's name was, however, continued in the subsequent proceedings in the Court of Session and House of Lords. Yelton, the ship's husband, by letter to the agent in Scotland, stated it to be Mr. Stein's request that a particular

solicitor named should be employed to conduct the appeal, and he was employed.

To the action by the solicitor, Stein, who was the principal defender, the others being insolvent; pleaded the triennial prescription; and averred (and the averment not disproved) that Yelton had no authority from him to write the letter to the agent in Scotland, that he never was consulted about the matter, and that the use of his name in the proceedings in Scotland and in Dom. Proc. had been entirely without his authority or knowledge. Answered that the law of Scotland and the triennial prescription did not apply, the debt having been contracted in England: and that, supposing that to be wrong, the prescription did not apply because the debt was constituted by writ, Yelton, as ship's husband, having power to bind the other owners, and having bound them by his letter. Judgment below for the defender, the Court being of opinion that it was itself the proper *forum*, and that a ship's husband could not bind the owners in this matter: and the grounds of judgment held in Dom. Proc. to be right.

But the Lord Chancellor being of opinion that, by the policy of the Hawkesbury acts, Yelton might have bound Stein as a co-owner, if their names appeared together as owners in the register, a copy of two registers (agreed by the parties to be a true copy) produced, in one of which the name of Stein appeared, in the other that of Yelton; but not being together in the same register the Lord Chancellor conceived that it was too much to say that they were co-owners; and judgment *affirmed*.

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THE Appellant, on the 3d March, 1810, brought his action in the Court of Session against John Yelton, shipmaster in Kincardine, James Ogilvie, ship-master there, and Robert Stein, farmer in Loanside, owners of the ship Diana, of Kincardine, for payment of 125*l.* 16*s.* 4*d.* being the balance of a bill of costs due by them to the Appellant, Mr.

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Campbell, for conducting an appeal to the Lords, in which he was agent for Messrs. Yelton, Ogilvie, and Stein, the owners of the Diana, who were the Respondents, and James Smith and other underwriters were the Appellants. Yelton and Ogilvie became bankrupt before the present action was brought.

The appeal of the owners of the Diana, in which the costs sued for were incurred, and the employment of the Appellant to conduct it, originated in the following circumstances: the Diana in the year 1799, in the course of a voyage from the Frith of Forth to the Baltic, fell in with the Lady Bruce of Newcastle, in tow of a French privateer. The Diana recaptured this vessel, and the owners immediately effected insurance to the extent of 400*l.* on the salvage supposed to be due to them as recaptors.

The Lady Bruce was again captured by a Dutch schooner privateer, and the owners of the Diana having made their demand upon the policy for the amount of the salvage, were met by the objection, that they had no insurable interest in the vessel.

Upon this point a long litigation took place between the owners and the underwriters, first before the Judge Admiral, and afterwards before the Court of Session. The owners were successful in both instances. The cause on the part of the owners was conducted in the Court of Session by Mr. Adam Rolland, writer to the signet. As soon as it was known that the underwriters had resolved to

carry the question to the House of Lords, Mr. Rolland addressed the following letter to Mr. Yelton, who was the ship's husband, and managed the correspondence for the other owners: "The "insurers of the Lady Bruce's salvage having ap- "pealed, what is to be done? Are you to follow "them, and defend? If so, the first thing which "the solicitor in London will require, is 50*l.* to "account of the expense." The ordinary solicitor employed by Mr. Rolland, their agent, was Mr. Mundell. The following answer was returned by Mr. Yelton to Mr. Rolland's letter: "I am fa- "voured with yours of the 14th instant, and note "its contents. We must undoubtedly follow on, "and defend. Mr. Stein mentioned this to me "some days ago, and requested that Mr. Campbell "should be employed as solicitor. I told him you "had a friend of your own, and, unless you was "quite agreeable, I could not do it. As to this, in "course."

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Jan. 14, 1804. Letter, Mr. Rolland to Mr. Yelton.

Jan. 16, 1804. Mr. Yelton to Mr. Rolland.

To this Mr. Rolland answered, that the parties might employ any solicitor they pleased. And upon being still pressed to say, whether Mr. Campbell was as agreeable to him as Mr. Mundell, he writes, "I am not entitled to say which of the two soli- "citors is most agreeable to me. When left to my- "self, I employ Mr. Mundell; but I know Mr. "Campbell as well as Mr. Mundell, and I know "them to be equally able and attentive; and that "you are in safe hands while your cause is under "charge of either," &c.

Jan. 22. Mr. Rolland to Mr. Yelton.

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Jan. 27.

Some farther correspondence took place, and Mr. Yelton again wrote, "I am favoured with "yours, and have again spoke with Mr. Stein, who "still wishes, as his name is into it, that Mr. "Campbell should be employed."

The Appellant was accordingly employed to conduct the case of the Respondents in the Appeal. And it is to be observed, that the proceedings in the *House of Lords*, as well as all the previous proceedings, were carried on in the names of Messrs. Yelton, Ogilvie, and Stein, as owners of the Diana, and that Stein was in fact a registered owner pending the proceedings in the Court of Admiralty.

The defence put in for Mr. Stein, the Respondent, to the Appellant's action was, "That the account "libelled on was *prescribed*, and the Defender de-"nies being *resting owing* any part of it." This defence was founded on the act 1579, cap. 83. by which it is enacted that "all actions of debt for "house maillies, mennis ordinars, servands fees, "merchants comptes, and uther like debts that are "not founded upon written obligationes be per-"seived within three yeires, utherwise the creditours "sall have na action except he outher priefe be "writ, or be aith of his partie."

The cause came before Lord Armadale as Ordinary. The Respondent was examined as a haver, and denied being in possession of any writings called for. Parties were afterwards heard by their counsel, and the Lord Ordinary was pleased to pronounce the following interlocutor: "The Lord Or-

" dinary decerns against the Defenders John Yelton " and James Ogilvie, for whom no appearance is " made, in terms of the libel; and having heard " parties procurators upon the grounds of the libel, " defences for the other defender Robert Stein, and " deposition emitted by him, in respect he does not " alledge payment, nor offer to instruct that his " name was not used in the question of appeal, " repels the said defences, and decerns also against " the said Robert Stein, in terms of the libel: finds " him liable to the Pursuers in expenses," &c.

March 2, 16, June 5, 1818. SOLICITOR.—PRESCRIPTION.—SHIP'S HUSBAND.—SHIP REGISTRY. Jan. 21, 1812. Interlocutor of Lord Armadale, Ordinary, first in favour of the Appellant.

Upon advising a representation, with answers, his Lordship pronounced this interlocutor: " Be- " fore answer, appoints the cause to be called, on " Wednesday next, and the Respondent to show " from the appeal case, or from the correspondence " betwixt him and the agent for the representer in " this country, that the name of the representer " was used as a party in the proceedings before the " House of Lords."

July 4, 1812. Interlocutor of Lord Armadale. Dec. 2, 1812. Interlocutor of Lord Armadale; 2d. in favour of the Appellant.

This order having been complied with, the cause was argued before the Lord Ordinary, and his Lordship pronounced the following interlocutor: " The " Lord Ordinary having resumed consideration of " the representation for Robert Stein, Defender, " together with the answers thereto, and having " heard parties procurators, finds sufficient evidence " that the question from which the account pur- " sued for originates, was for several years publicly " carried on before the Court of Session, in the " names of Yelton, Ogilvie, and the Representer

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" Robert Stein, as joint owners of the ship or vessel " the Diana of Kincardine; and was afterwards, " in the same manner, carried on in their joint " names, in the appeal; therefore, and in respect " of what is stated in the former interlocutor, now " under review, refuses the desire of the represen- " tation, and adheres to that interlocutor."

Jan. 12, 1813. Interlocutor of Lord Ordinary; 3d in favour of the Appellant.

Against this interlocutor, Mr. Stein, the Respondent, gave in a full representation, which the Lord Ordinary refused, without answers, of this date, " reserving to the Defender to insist against " his own agent, if he should be so advised."

May 26, 1813. Interlocutor of the Court of Session (First Division) first appealed from.

Mr. Stein reclaimed to the whole Lords (First Division) against these interlocutors; and upon advising his petition, with answers, their Lordships were pleased to pronounce the following interlocutor: " The Lords having resumed consideration " of this petition, and advised the same, with the " answers thereto, they alter the Lord Ordinary's " interlocutor reclaimed against; sustain the defence " of the triennial prescription, and find that the " constitution and subsistence of the claim libelled, " are only competent to be proven by the oath of " the Defender; and remit to the Lord Ordinary " to proceed accordingly; but find the Pursuer not " liable in the expense of process."

From this interlocutor Mr. Campbell appealed; and Mr. Stein appealed from it for his costs, and to this cross appeal a formal answer was put in.

The reasons of appeal were,

I. The contract being entered into in England,

the *lex loci contractus* must regulate both the constitution and extinction of the debt. The demand was made by *legal* process, a few months after the lapse of three years; and a demand had been previously made as stated in the summons, by rendering the bill to Mr. George Mill (at the time the agent of the ship-owners) on the 13th June, 1807, in less time than a year after the judgment of the House of Lords.

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II. It is proved by the letters of Yelton, the ship's husband, that he *was specially authorized* by the Respondent, Mr. Stein, to commit the charge of the case of the Respondents in the appeal, brought by the underwriters to the Appellant, Mr. Cambell. However solemnly the Respondent may now (after the interlocutors which were favourable in the courts below to the ship-owners have been reversed) assert that Yelton's letters were written without any communication with him, it must be remembered that Yelton was a co-owner and the ship's husband, and the partner of the Respondent in the ship, and therefore whatever he did, bound the other owners as well as himself; and Mr. Stein cannot be heard to say, that *his partner* in his correspondence acted unfairly, so as thereby to affect *third* parties. At the same time the Appellants must be permitted to observe, that the Respondent has never denied his knowledge of the capture made by the Diana; his knowledge of the actions both in the Court of Admiralty and in the Court of Session in Scotland, and afterwards in the House

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of Lords, and he never, it will be observed, objected till a demand was made upon him for the expenses attending the supporting the judgments of the courts below. Then to be sure he says he was not consulted "as to the propriety of instituting, "nor informed of the mode of conducting the "original action;" and again, that "he was utterly "ignorant that his name was used in the proceed-"ings." These are matters he must settle with his partners. It might naturally occur to them, that a person whose name was in the ship's register must have known, that he necessarily became a party in every action arising out of the ownership; and perhaps in conducting the cause, the other owners might have considered the assistance of the Respondent as not of very great importance. The decisions in the cases of *Spottiswoode v. Arnot*, and *Campbell v. the Equivalent Company*, even when there was no partnership, but merely a co-operation, not very steady, for attaining a particular object, determined, that acquiescence at one time, and no actual dissent afterwards, was equivalent to a mandate. Here the Respondent was aware of the proceedings from their commencement, and not only entered no dissent, but actually authorized the employment of the Appellant, Mr. Campbell. The cases too of *Nasmyth v. Jameson*, *Sadler v. M'Lean*, and *Drummond v. Stewart*, support the same arguments.

III. The Respondent admits his name was in the ship's register; he does not deny that he knew of,

though he says he was not consulted, as to the litigation; he admits that Yelton was the ship's husband; Mr. Yelton, therefore, had, *without* any special mandate or authority from the other owners, power to act as he did in following out the claim on the underwriters. He was the managing partner, and by his acts bound all the other partners.

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IV. The claim does not fall under the act 1579, were it to be considered as a debt contracted in Scotland. The mandate of the ship's husband was in law the mandate and writing of the Respondent. The constitution of the debt therefore is by "writ" of party; and the Respondent himself admits, that claims of this description do not fall under the triennial prescription. The communications of Yelton are in law the same as if the communications had been made by Stein himself, and it is not necessary to trace home to the Respondent *personally* any act or deed inferring his approbation, although if it were, it is apprehended, that the knowledge of the proceedings,—the having entered no dissent, and the letters of his managing partner Mr. Yelton, are sufficiently satisfactory on this part of the case; and as the present question does not fall under the statute 1579, it is unnecessary to examine minutely the authorities and cases relied on by the Respondent. The debt is clearly constituted by a mandate in writing; the Respondent does not even allege payment, and there therefore can be no ground for applying the statute.

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In the case for the Respondent it was argued, with respect to the first point, *viz.* whether this was to be considered as a question of English law, that if by the law of Scotland, there is no distinction, as to this question of prescription, between the accounts of a writer and a merchant, and if it be also settled, that where the merchant creditor resides in England, and his debtor in Scotland, the latter may plead the triennial prescription, the same defence must be available, when the action is at the instance of an English writer or solicitor. But, more than a century ago, in the case of *Mason v. the Earl of Aberdeen*, the Court of Session "were clear, that there is no distinction "to be made betwixt merchants' and writers' ac- "counts;" and in no succeeding case has this principle ever been departed from. Now, if there be no distinction between the accounts of merchants and writers, where both parties are domiciled in Scotland, it is presumed, that an alteration in the domicile of the Pursuer must have precisely the same effect, whether he be a merchant or writer. If therefore the Respondent can show, that the triennial prescription is a good defence, where the action is at the instance of an English merchant, for goods furnished in England, the Appellants can dispute its application to this case in no other way, than by proving a *generic* distinction between the law-account of a Scotch writer and of an English solicitor. This they have not pretended to do; and in order to dispose of this preliminary objection, it

Mason v. Earl of Aberdeen, Nov. 29, 1709; Morrison's Dict. p. 11095.

seems only necessary to establish that, in the parallel case of an English *merchant*, the triennial prescription is a relevant defence to a domiciled Scotchman.

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At one period the decisions fluctuated a good deal upon this latter point; but as no alteration has occurred for more than forty years, the Respondent conceives it sufficient to refer to a single case, at the commencement of that period. In the case of *Randal v. Innes*, 13th July, 1768, the general question now attempted to be revived by the Appellants, was fully discussed and deliberately determined. The Pursuer of that action had furnished goods to a Captain Innes, in the years 1757, 1758, 1759, and 1760, during nearly the whole of which period both parties resided at Woolwich. Captain Innes came to Scotland in the end of 1759, where he continued to live till his death, which happened in 1765. Randal brought an action against Captain Innes's representatives; and these parties pleaded the triennial prescription as their defence. The Pursuer argued, that the question ought to be decided by the *lex loci contractus*, or law of the creditor's domicile; whereas, it was successfully maintained by the Defenders, that it ought to be governed by the law of the debtor's domicile, or the *lex loci* where the action was brought. "The Court sustain the defence of "the triennial prescription, assoilzie the Defenders, "and decern,"—was the judgment pronounced.

Faculty Collection.

The most recent case in which the triennial pre-

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scription has been sustained, in opposition to the claim of a domiciled Englishman, is that of *Thomson v. Lord Duncan*, which was decided by the Second Division of the Court in the winter session of 1808, 1809. The cases of *Delavalle v. Creditors of the York Buildings' Company*, Fac. Coll. vol. 10, p. 404; and *Strother v. Read*, Fac. Coll. vol. 14, p. 253; were stated at some length in support of the same principle.

2d. In answer to the objection, that the Respondent had not alleged payment, it was argued: 1st. That a person pleading the triennial prescription was not bound to allege payment, because the debt might never have existed, *Thomson v. Lord Duncan*, 1808-9: 2d. The constitution, as well as the subsistence of the debt, must be referred to the oath of the party. *Erskine*, b. 3. t. 7. s. 18.; b. 4. t. 2. s. 11.—*Douglas v. Grierson*, Nov. 18, 1794. Fac. Coll. vol. 11. p. 295.

3d. The facts were admitted that Ogilvie being owner of one half the vessel called the Diana, and being indebted to Stein the Respondent, he, in 1797, gave him a security for the debt over his half of the vessel; the deed, as is usually done in these cases, being framed in the form of a conveyance; that in 1798, before the suit terminated in the Court of Admiralty, the vessel was sold and Stein's debt paid: that Yelton, Ogilvie, and their agent, knew that Stein's interest was merely a security; that he could have got nothing in respect of the suit for the salvage insurance money, though the suit had been

successful in the House of Lords; and that his debt had been paid, though they had not succeeded. It was impossible therefore that Stein could be bound as joint owner by Yelton, who, in introducing his name into the proceedings, acted without his knowledge or authority. Neither could Yelton, as ship's husband, bind him in the proceedings from the time of their commencement in the Court of Session, the vessel having been sold before, and he being no longer ship's husband. Besides, this was not a matter in which the act of a ship's husband could bind the owners. The Respondent positively denied that he had given permission to use his name in any of the proceedings, or that he ever knew that his name had been used either in the Court of Admiralty or subsequent proceedings until he received the summons in the action brought by Mr. Campbell.

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There was no new point in the argument above, except what was suggested by the Lord Chancellor, who put the question whether the action for the salvage insured could have been maintained at all unless Stein's name had been in it: and whether a court of law could look at it at all, unless the ownership was made out according to the register. It was contended for the Appellant, that Stein was clearly an owner, as his name, by his own admission, was in the register as such; and there was no such thing as an equitable interest in a ship. For the Respondent it was contended, that the cross appeal

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for his costs was regular, as the objection had not been taken by petition to the appeal committee, but a regular answer put in. To this it was answered that the question still remained, whether the House would entertain an appeal merely for costs.

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Lord Eldon, (C.) I believe this case will very much depend on what power Yelton had to bind the rest; and if Stein's name was in the register as an owner of the ship at the time when the action was brought in the Admiralty Court to recover the amount of the money insured on the salvage, it will be impossible to say, under the policy of Lord Liverpool's acts, that he had then no interest; and there is no such thing as an equitable interest in a ship. As ship's husband, to be sure he could give no authority in a matter of this kind; but the question remains whether his act did not bind Stein as co-owner.

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Lord Eldon, (C.) The Appellant in this case is a very eminent agent, residing in this part of the United Kingdom—I mean in London: and the action was brought by him in the Court of Session against Mr. Stein, to recover the costs of an appeal in this House.

The answer to this demand was, 1st. That he (Stein) never was liable: 2d. That if he was, the triennial prescription applies: and it has been decided that it applies to the accounts of writers, agents, procurators, &c. as well as to merchants' ac-

Ers. B. 3. T. 7. S. 17.

counts: and it appears that it made no difference that the demand was for the costs of an appeal in this House, and that the person who brought the action was resident not in Scotland but in London. The triennial prescription it seems applies notwithstanding. But it does not apply where the demand is founded in writing, or the debt can be proved by oath of the debtor.

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Now if this case is to be decided on the principles applied as the ground of judgment by the Court of Session, I think the decision, in that view of the case, is right. But then there is another view of it, which, as it appears to me, has not been sufficiently considered. Stein was mortgagee of a ship called the Diana; and by certain acts of parliament known by the name of Lord Hawkesbury's acts, no property in a ship can exist except in the mode pointed out by these acts. When the first act was introduced, enacting that no property should exist in a ship except it was conveyed in the manner there specified, the distinction between the legal and equitable interest was not attended to; and then a second act was passed enacting, that neither the legal nor equitable interest should pass, except in the mode prescribed by these acts.

And then this difficulty arose that when money was borrowed on a ship that the mortgagee must be the absolute owner. The meaning of the transaction as between the mortgagor and mortgagee is that the ship should be only a security for the debt, and that the mortgagor should still have the equity

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of redemption. But how is this to be managed? because the acts say that there shall be no equitable interest as distinct from the legal. And we have been employed, I mean I have myself been employed, upon many petitions in bankruptcy, in cases where ships were mortgaged for sums far below their real value, and where the assignees said, "we have the legal title, and the ships are absolutely ours;" and, though the mortgage might be only for 3,000*l.*, and the ship might be worth 15,000*l.* the reason would be the same. It is necessary, therefore, that we should see who were, in point of law, the owners; and then it will be to be considered whether the written authority of Yelton must not be taken to be the written authority of Stein, in which case the triennial prescription would not apply. For this purpose we must have a copy of the register, which the parties may agree to be a true copy of the register, when the action was first brought against the underwriters, and also the proceedings in that action; and if these papers should be laid before us in time, the cause may be disposed of on Thursday.

Upon the grounds taken by the Court of Session I think the decision is right; whether a new ground may not be laid we cannot know without seeing these papers.

Judgment. June 5, 1818

Lord Eldon, (C.) This case comes before your Lordships by appeal from a judgment of the Court of Session, given in an action brought in that Court

by a very respectable gentleman, Mr. Campbell, and Mr. Gibson as his agent, against John Yelton, James Ogilvie, and Robert Stein, owners of the ship Diana, of Kincardine, for payment of a sum of 125*l.* 16*s.* 4*d.*, the balance of a bill of costs, due by them to Mr. Campbell, for conducting an appeal to this House, in which Mr. Campbell was agent for these owners. The summons in this action stated, "That John Yelton, shipmaster in "Kincardine; James Ogilvie, late shipmaster in "Kincardine; and Robert Stein, of Loamside; "owners of the ship or vessel called the Diana of "Kincardine, are justly addebted and owing to the "Pursuers the sum of 125*l.* 16*s.* 4*d.* sterling, being "the balance due on a bill of costs, incurred for "them as Respondents, in an appeal at the instance "of James Smith, and others, against the said John "Yelton, James Ogilvie, and Robert Stein, con- "form to bill of costs transmitted to George Mill, "writer in Edinburgh, their agent." And it concluded, "that the said John Yelton, James Ogilvie, "and Robert Stein, ought and should be decerned "and ordained, conjunctly and severally, by decree "of our Lords of Council and Session, to make "payment to the Pursuers of the aforesaid sum of "125*l.* 16*s.* 4*d.*, with the legal interest thereof, "from the 13th day of June, 1807, when the said "bill of costs was rendered, and in time coming "during the not-payment."

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Summons.

The defence to this action was, that the account commenced on the 3d Feb. 1802, and ended 22d

Defence.

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July, 1806. The present action was not brought till the month of January, 1810. "The account "is therefore prescribed, and the Defender denies "being *resting owing* any part of it;" this defence, take it as you please, not stating whether or not the debt was originally constituted, but that if it ever was constituted, it was prescribed: and that if it was once owing, it was not owing now, not being founded on a written obligation.

The question whether the debt falls within the triennial prescription depends upon the act of the Scottish parliament, 1579, cap. 83. introducing the triennial prescription, by which it is enacted, "that "all actions for house mailles, mennies ordinars, "servands' fees, merchants' comptes, and uther "the like debts that are not founded on written "obligations, he pursued within three years, other-"wise the creditor shall have no action, except he "either prove by writ or oath of his party."

Solicitor suing a debtor in Scotland for costs of an appeal in England, the Scotch law governs the case, and the triennial prescription may be pleaded.

Several questions were raised in the cause—1st, It was contended for the Appellants that, this being an English debt, the triennial prescription of the law of Scotland had nothing to do with it. But as it has been ruled, that a solicitor's accounts stand on the same footing with respect to this prescription as a merchant's accounts, and that, where the merchant creditor resides in England and his debtor in Scotland, the latter may plead the triennial prescription, the allegation that the triennial prescription has nothing to do with this demand cannot be made good. 2dly, It was contended that Mr.

Campbell acted on the written authority of Yelton given in his correspondence with Mr. Rolland; and that, Yelton being the ship's husband, the Respondent, Stein, was bound by that authority. But I cannot conceive that a ship's husband has, as such, the power to pledge his owners to the expences of a law suit.

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Ship's husband cannot as such pledge his owners to the expences of a law suit.

And after attending to this case as much and as anxiously as ever I attended to any case, because, if the Repondent is in justice liable, as this is a debt most justly owing to Mr. Campbell, it is hard that the demand should fail upon the ground of the prescription, I was anxious therefore to ascertain from the register, whether Stein and Yelton must not, under Lord Liverpool's acts, about which your Lordships may recollect there was some discussion, be considered as co-owners. Stein was a mortgagee of a part of the ship, and he states that his mortgage was paid off. But his name appears on the register, and he there, on his oath, states himself to be an owner. But on looking at the registers, it appears, unfortunately, that Yelton's name is not in the one, and that Stein's name is not in the other. It would be too much, therefore, to say, they are co-owners; and it is impossible, then, to act upon the view of the case first suggested from the inside of the House.

Yelton and Stein, their names not appearing on the same registry, are not co-owners.

The question then comes to the view of the case taken by the Court of Session; and it is with great regret, if that expression may properly come from

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a judicial mouth, that I am compelled to say, that I think this action cannot be maintained.

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Judgment AFFIRMED.

IRELAND.

APPEAL FROM THE COURT OF CHANCERY.

GORT (VISCOUNT) and MAYOR, SHERIFFS, and CITIZENS of LIMERICK, } *Appellants.*

ATTORNEY GENERAL—*Respondent.*

May 25, 1817.

INFORMATION.—DEMURRER.—CHARITABLE USE.

INFORMATION by the Attorney General, at the relation of a freeman of Limerick, against the Chamberlain, and Lord Mayor, Sheriffs, and Citizens or Common Council of that city, stating that certain lands and revenues were granted to and vested in the corporation at large for divers public uses and purposes, the improvement of the city, and the preservation and support of public buildings, bridges, highways, and establishments therein: that the defendants had usurped the powers of the whole corporate body, and that the Chamberlain, in concert with the Common Council, had contrary to the charters and immemorial usage applied the revenues to their private purposes, without reference to the citizens and freemen at large, in their general assembly or Court of D'Oyer Hundred, &c.: and praying that the Chamberlain might account, aud that a receiver might be appointed. Demurrers, for want of equity and jurisdiction, overruled by M. R.; and the order affirmed