No. 50.

THOMAS RICHARDSON, W. S. (for DOUGLAS, HERON and Company) and Others, Appellants.—*Mackenzie.*

Countess-Dowager of HADINTON, and Husband, Respondents.—*Fullerton—Adam.*

Foreign—Prescription—Bankrupt.—A Scottish bankrupt under sequestration having gone to Russia, and resided there for more than ten years, and till his death; and having left a fortune, to which his daughter, residing in Scotland, succeeded; and she having brought an action of declarator before the Court of Session against her father's creditors, to have it found that the debts were extinguished by the decennial prescription of Russia, and null and void; and the Court having decerned in terms of the libel;—The House of Lords found, That the debts were not null and void, and extinguished; but remitted to the Court of Session to make further inquiries into the effect of the law of Russia, under the circumstances of the case.

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1ST DIVISION. Lord Gillies.

CHARLES GASCOIGNE, a native of Scotland, was a partner of Francis Garbett and Company, merchants at Carron Wharf. On the 25th June 1772, the estates of that Company, and of Mr Gascoigne as an individual, were sequestrated under the 12. Geo. III. ch. 72. Mr William Anderson, writer to the signet, was appointed trustee, in whose favour Mr Gascoigne executed a conveyance of the effects both of the Company and of himself, and under whom he acted as manager. The sequestration had, under a provision of the above statute, been superseded by a trust; but, on the 23. Geo. III. ch. 18. being passed in 1783, it was revived, and proceedings took place as if it had been an original sequestration. Mr Hogg was named interim factor, and afterwards trustee,—Mr Gascoigne was examined before the Sheriff,—the creditors produced their grounds of debt and affidavits, and regular meetings were held. Mr Gascoigne continued to reside at Carron Wharf, and to act as factor for the trustee, till 1786, when he left Scotland, and went to Russia. He there realized a large fortune, and in 1798 he made a proposal, through his friend Mr Elphinstone, to pay a sum of money to the trustee, in consideration of a discharge being granted to him by his creditors. A great deal of correspondence took place in relation to this subject, in the course of which it was never alleged that the debts were extinguished; but, on the contrary, the proposition for a discharge was made on the assumption of their being still in subsistence. This negociation, however, did not prove successful; and, in the meanwhile, Mr Gascoigne had indorsed and remitted certain bills to his daughter, Lady Hadinton, residing in

Scotland, accepted in his favour by Messrs Stein, merchants in Scotland; and for payment of which she raised an action before the Court of Session, obtained decree, and afterwards recovered the amount. Mr Gascoigne died in Russia in 1806, leaving a will, whereby he conveyed his whole effects to his daughter, Lady Hadinton. Soon after this event she renewed the proposal which had been made by her father for a discharge of the debts, on payment of L.10,000. After much correspondence this proposition also proved unavailing. In the meanwhile the sequestration was carried on, and Mr Hogg having died, Mr Henderson was appointed trustee in his place, and a dividend of 11s. in the pound was paid. In 1812, Gibson and Balfour, creditors of Mr Gascoigne, brought an action of reduction against Lady Hadinton of the bills, (on which she had obtained decree against the Messrs Stein), alleging that she was a conjunct and confident person, and that they were liable to be set aside on the Act 1621, and that she was bound to account for the amount of them. At the same time another action was brought by Mr Home of Paxton, as manager for Douglas, Heron and Company, creditors of Mr Gascoigne, concluding against Lady Hadinton for payment of upwards of L.20,000, on the passive titles, and as holding certain bills in trust for her father. These actions led to a renewed proposal by Lady Hadinton for a discharge, but this was unsuccessful. She then, with concurrence of her husband, raised an action of declarator before the Court of Session against the creditors, in which, after setting forth the facts above-mentioned, and that Mr Gascoigne had gone to Russia in 1786, animo remanendi—that he had been domiciled there—had become a naturalized subject of that country, and resided there till his death, (being twenty-one years from the date of his leaving Scotland)—that no judicial proceeding had been adopted against him according to the laws of Russia by any of the creditors—that the debts were totally extinguished by the decennial prescription of Russia, and that she had merely by his death acquired a Russian succession,—she concluded, that 'it ought and should be found, decerned, and declared, by 'decree of our said Lords, that the said pursuers are not ac- 'countable in Scotland to all or any of the said creditors, or 'pretended creditors, defenders, or any other person whatsoever, 'for their intromission with, and the administration of the estate, 'means, and effects of the said deceased Charles Gascoigne, 'heritable or moveable, real or personal, acquired and left by 'him at his death in Russia, and subject to the laws of that em- 'pire; and further, and at all events, it ought and should be

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June 10, 1824. 'found, deemed, and declared, that all and each of the debts 'due, or pretended to be due, to the persons above-named and 'designed, or their predecessors, authors, or cedents, were, at 'the time of the death of the said Charles Gascoigne, and are 'now, and in all time coming, null and void, and extinguished 'in law, and can be followed with no legal diligence, compul-'sitor, executions, or effect of any description; and of consequence, 'that the said Ann, Countess-dowager of Hadinton, and her 'said husband, pursuers, and all others, the children, family, and 'representatives of the said Charles Gascoigne, are freed and 'discharged of the said debts, or pretended debts, in all time 'coming,' &c.

In defence the creditors denied there was any such law in Russia having the effect alleged; and they maintained, that their debts could not be affected by the law of Russia; but that, supposing there was such a law, and that their claims could be affected by it, still they were protected by the sequestration, and taken from beyond the effect of the Russian law by the terms of the correspondence.

The Lord Ordinary appointed Lady Hadinton and her husband to give in a condescendence of the facts they averred, and 'particularly as to the residence of Mr Gascoigne in Russia, and 'the law of that country as applicable to this case.' Thereafter his Lordship remitted to George Joseph Bell, Esq. advocate, to make up a Case for the opinion of Russian Counsel, who accordingly did so, and it having been approved of, it was laid before Mr A. Brockhausen and Mr George Hartmann, Russian advocates. In the Case, after stating the facts, and referring to the correspondence, these queries were put to the Counsel:—

'I. Without having any regard to the proceedings in Scotland, or the foreign origin of the debts, be pleased to say,—

'Whether, by the law of Russia, a person who takes, under the will of a father, the estate or effects which belonged to him, does thereby become responsible in Russia for his debts? And if so, whether for his foreign debts, as well as for those due in Russia?

'2. Whether there is any difference between such responsibility, supposing it to be incurred, and the responsibility of the original party, either as to endurance or otherwise?

'3. Whether there be, in the law of Russia, any limitation or prescription, by which the right of a creditor to demand his debt, either from the debtor himself, or from his heir, is discharged, or cut off, in consequence of the lapse of time; ten years

or any other space of time? And be pleased to explain, whether, by any form of judicial or extrajudicial demand, this discharge, from lapse of time, may be interrupted; and what the distinguishing character of such interruption is?

'4. Whether, if any judicial demand has been made in Russia, and the creditor has ceased to persist in that demand, the debt would be discharged by prescription? And what period of cessation from such action or demand is requisite to produce this effect?

'II. Taking the supposition, that, by the law of Scotland, the debt would be discharged by prescription, and that the proceedings in bankruptcy would have no effect in preventing the rule of prescription from applying, be pleased to say,—

'1. Whether the creditor would still be admitted to make his demand in Russia against the original debtor, if alive? or against his heir taking his succession, after his death?

'2. What would be the effect, in the Russian tribunals, of the correspondence between the parties, in reviving a responsibility which otherwise would have been held as discharged?

'III. Taking the supposition, that the proceedings in bankruptcy in Scotland, if not overruled or counteracted by the Russian law of prescription, have kept the debt alive there, so that it might be demanded from the original debtor, if still in life and in Scotland, or from his heir, being in that country, and having effects derived from the will of the original debtor, be pleased to say,—

'1. Whether would the debt be demandable also in Russia; either from the original debtor, if alive, or from his heir in possession of his estate, and effects? Or would any Russian law of prescription be held to discharge the person of the debtor or his effects from responsibility for the debt?

'2. Would the correspondence already referred to have any effect in establishing, in the Russian tribunals, a responsibility not otherwise incurred?'

To these Mr Hartmann returned the following answers:—

'I.—1. As soon as the heir takes possession of the property of the deceased, he becomes responsible for the debts and other obligations of the deceased, not only to the whole amount of what he has inherited, but as far as his own personal means will extend; and that responsibility attaches to debts both in and out of Russia. Code of Laws (Oulogenie).—Ordinances of the years 1714, 1716, and 1725.—Regulations as to Bills of Exchange.—Bankrupt Regulations.

'2. There is no difference between such a responsibility and

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that of the first debtor, either by its duration or otherwise.—Bankrupt Regulations, Part II. Section 13. § 69.

'3. The 4th section of the Imperial Manifest of the 28th June 1787, fixes the prescription of ten years for every process whatever; and after the expiration of this period, the right of a creditor to demand his debt, either from the first debtor or from his heirs, becomes completely null and void; and this annihilation of the right, after the lapse of ten years, can neither be prevented nor interrupted by judicial or extrajudicial forms.—Bankrupt Regulations, Part II. Section 13. § 69.

'4. In the event of a judicial demand having been made, and that the creditor had ceased to persist in it, ten years must elapse after that cessation, to produce the effect of prescription.—Imperial Manifest, 28th June 1787, § 4.—Bankrupt Regulation, Part II. Section 13. § 69.

'II.—1. If, by the laws of Scotland, a debt becomes annihilated by prescription, the creditor in that case cannot make his demand in Russia against the first debtor, or against the person who has inherited from him after his death, supposing the time fixed for the prescription in Scotland to be also at least ten years.

'2. It is true that, according to the Military Regulation admitted in all civil causes, (Process, 2d Part, chap. 4. §§ 2, 3, and 4.), the correspondence which has existed between the parties interested may give rise to motives for entering upon a new process; but as that regulation, as well as the ordinance of the 5th November 1723, are only expressed in general terms upon the forms of proceedings, and as no positive law exists declaring that a private or particular correspondence entered upon between the debtor or his heirs with the creditors, after the prescription has been in operation, might oblige that debtor to pay his creditors a debt already superannuated, it is impossible to guarantee the fortunate result of such a process. Still it is true, that there exists similar instances where the Supreme Ruling Senate has pronounced in favour of the creditors; but these decisions have only been given in special cases, and they have not been promulgated as established laws. Further, no precedents can ever be considered as laws; according to lib. 13. Cod. de Sent. et Interloc. where it is said, Non exemplis sed legibus adjudicandum. In short, in entering upon such a process, the adverse party must be upon the spot; and the duration of such a litigation is not only very long, but subject to considerable expense.

'III.—1. Supposing that the bankrupt proceedings in Scotland have had the effect of perpetuating and continuing the debt, and that there had been a formal judgment against the debtor, of a date within the period of ten years; then the creditors might demand, in Russia, the payments from the first debtor, in case he was alive, or if he was dead, from his heirs. June 16. 1824.

'2. The correspondence which has subsisted between the parties interested may contribute to establish before the Russian tribunals a responsibility, as it has been before observed.'

Mr Brockhausen made these answers:—

'I.—1. Every heir entering into the possession and enjoyment of the property of a debtor, is under the obligation of paying the debts of the deceased, wherever they exist, without any distinction or contravention whatever;—as it is prescribed in the Code of Laws, (Oulogenie), chap. 10. §§ 132. 207. and 245.—Ordinances of the years 1714, 22d March; 1716, 15th April;—1725, 28th May.—Regulation regarding Bills of Exchange, 1729, 16th May, § 22.—Ordinances, 1730, 9th December; 1731, 17th March;—1756, 6th September; 1763, 7th May.—Bankrupt Regulations, 1800, 19th December; First Part, 161. and 165.; Second Part, § 110.

'2. Foreign creditors enjoy the same rights as those living in the country; and the heir, in accepting the property, even if of less value than the amount of the debts, becomes personally responsible for the whole, and must make up the deficiency from his own funds.—Bankrupt Regulations, § 165., and Second Part, § 110.

'3. Any debt not judicially claimed, or process, although instituted, and not followed up during a lapse of ten years, is annulled and condemned to eternal oblivion, by the law alone, without intervention of the debtor. Manifest of the year 1787, 28th June. But when there is no interval of ten years from one petition to another, or of any other proceeding judicially verified, the reclamation, or process, remains in full force.

'4. See Answer 3.—The debtor may produce the act of prescription the day following the last day of the expiration of the tenth year.

'II.—1. According to the Manifest of 1787, no reclamation would be any longer admitted, either against the debtor, if in life, or against his heirs representing him, after his death. It would be equally the same if there was a prescription of a foreign tribunal.

'2. The correspondence would necessarily revive motives to

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enter upon a new process, if ten years have not elapsed from its date.—Military Regulation, (admitted in all civil cases).—Processes, 2d Part, chap. 4. §§ 2, 3, and 4.

III.—1. If the debts were recognized as valid by a foreign tribunal, and that there was a formal judgment against the debtor of a date within the period of ten years, then a judicial execution against the property of the debtor, or of his heirs, would be admitted in its full vigour; and there exists no law against it.

2. The correspondence, written or signed by the hand of the debtor, or of his heirs, may serve as a motive for establishing in Russia a new process in due form (plaidoyer), according to the ordinance of 1723, 5th November; but the correspondence of a third person cannot be sustained as proof, unless it is accompanied by a full power; so that, to enter upon such a process, it would be necessary for the adverse party to be upon the spot. N. B.—The progress of such a process is very slow, and the expense considerable.'

The Lord Ordinary having reported the case upon informations, and the actions at the instance of Gibson and Balfour and Mr Home against Lady Hadinton having also been brought before the Court at the same time, their Lordships, on the 6th of March 1821, pronounced this interlocutor:—'The Lords repel 'the defences in the process of declarator and extinction brought 'at the instance of the Countess of Hadinton and her husband, and decern and declare in terms of the conclusions of 'the libel in the said process; and in the several processes 'brought against the said Countess and her husband, at the instance of Messrs Gibson and Balfour and the late George 'Home of Paxton, the Lords sustain the defences, assoilzie the 'defenders from the conclusions of the several libels in the said 'processes, and decern accordingly; and find neither party liable 'to the other in the expenses of process in the said actions, or 'any of them.' *

Against this judgment Mr Richardson, (who had now succeeded Mr Home as manager of Douglas, Heron and Company), together with Gibson and Balfour, and the trustee in the sequestration, (which was still in dependence), appealed, and maintained that it was erroneous,—

1. Because (abstracting from the sequestration) Mr Gascoigne

* Not reported.

himself had no right to have pleaded the Russian law of prescription in the Court of Session. In support of this proposition they argued, that there was no foundation, either in reason or legal authority, for the general proposition which was maintained by the respondents, that in all cases whatever the question of prescription of debts must depend on the law of the residence of the debtor, without respect to the residence of the creditor,—the place of contract,—the place of performance,—or the Court in which the question is tried. As to the reason of the thing, the law of prescription is a law directed to the creditor. It is a law commanding him to sue for payment or performance within a certain time, under the penalty of losing his claim in case he shall not, or of being limited to certain kinds of evidence, or other such consequences. When, therefore, two Scotchmen contract in Scotland for payment or performance of something in Scotland, it does not appear how the debtor, going away without the consent of the creditor—it may be without his knowledge—to foreign countries,—to Kamtschatka for instance, or to China, or to Spanish America, or any other remote part of the earth,—can subject the creditor, who remains in Scotland, to the laws of prescription of these places. These laws may command creditors to sue for payment or performance within ten years, or within three years, or within one year; but the question is, how the creditor, who never was within the territory of these laws, can be at all affected by them? The rule is, Statuta non exeunt territorium. These laws may be very proper in respect to creditors who are subject to them. But what has a Scotch creditor to do with them who never leaves Scotland, but there contracts with another Scotchman, and there sues his debtor? It is said, no doubt, that prescription is founded on presumption of payment, or of abandonment by the creditor; and that either of these views of it leads necessarily to its being regulated by the law of the debtor's domicile. But it is impossible to see how this conclusion can be drawn. If payment is to be presumed, it must be presumed to have been made in the country where it was stipulated by the obligation; that is, in the present case, in the country of the creditor. It is the law of Scotland, therefore, which must regulate what are the circumstances which are to be equivalent to payment there. The same may be said of abandonment. There can be no presumption of this so long as the obligation to pay exists by the law of the country where it is alone prestable, and where the creditor is entitled to expect it to be fulfilled. In regard to the authorities, it was true that,

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when a person who has contracted a debt in another country, and comes afterwards to fix his residence in Scotland, and to be prosecuted there, the Court have, in several instances, followed their own prescriptions, or those of the lex loci contractus, but they have not done so uniformly. In the present case, however, this was not the species facti; because here the debts had been contracted in Scotland, and the creditors were not pursuing for payment in the foreign court within whose jurisdiction the debtor resided, but the representative of the debtor had brought an action against the creditors before the court within whose jurisdiction the debts had been contracted.

2. Because the proceedings in the sequestration were sufficient to prevent Mr Gascoigne from pleading the Russian law of prescription in the Court of Session. A sequestration is a judicial process for recovering payment of debt; and it is impossible to maintain, that if an ordinary action had been raised, and the defender, during its dependence, had gone to Russia, and remained there for ten years, he could plead a defence that the debt was thereby extinguished. If not, then as the sequestration was both an action of constitution and of realization, and the Bankrupt Statute expressly declared that the lodging of a claim should have the effect to interrupt prescription, it was impossible that Mr Gascoigne, or his representative, could maintain the present plea. And,

3. Because, even if the Russian law of prescription were held admissible, the respondents had not established, by the opinions of the Counsel, that it would have the effect to extinguish the debt under the circumstances of this case, and particularly with reference to the correspondence.

On the other hand, it was maintained by the respondents,—

1. That long before the death of Mr Gascoigne, the claims of the appellants had been completely extinguished by the prescription of the law of Russia; which, as being the law of the domicile, must be held to determine the question of his liability. Whatever may have been the origin, in theory, of the law of prescription, its admitted operation is to extinguish the rights of the creditor, or, at all events, to afford the debtor a plea in bar of those claims, as complete as if a regular discharge had been granted by the creditor. When the creditor and debtor are both resident in the same country, the law of that country, of course, decides the question. When they reside in different countries, in which different periods of prescription are introduced, the question becomes more difficult; but yet the adoption of the

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law of the domicile of the debtor will be found to be a necessary consequence, from the very objects which the law of prescription was intended to answer. Its chief and leading object is the protection of the debtor; and that object is accomplished by attaching to the lapse of a certain time, without any claim against the debtor, the effect of a discharge. But, as it is clear that the courts of the debtor's domicile are, in general, the only courts in which a personal claim can be made, it seems to follow, that the law of that domicile must determine the precise period upon which the debtor's prescriptive immunity from such personal claims will depend. The debtor, knowing that he can only be summoned in those courts, is entitled to plead, that the silence of the creditors, during that period which the law of those courts hold as extinguishing claims by prescription, must protect him from future demands; and, on the other hand, the creditor, who, as in every other case of contract, debet scire conditionem ejus cum quo contrahebat, must be presumed to know the law of that country, before whose court alone the debtor could be cited with effect; and, consequently, to have voluntarily subjected himself to that implication of the discharge of the debt, which the law of that country attaches as a penalty to the neglect of its enforcement during a certain specified period. In short, as the practical effect of prescription every where is the discharge of the debtor, in consequence of the creditor's failure to claim during a certain period; and as the claim, if personal, can be made only in the domicile of the debtor, it follows, that the non-claim during the period of prescription, sanctioned by the law of the domicile, effects a discharge, good according to the law of that country where the res gestæ effecting a discharge took place.

2. That the circumstance of the existence of the sequestration could make no alteration in the case. There was no similarity between an ordinary action and a sequestration. It may be true, that when an action is raised against any party, and issue fairly joined, the dependence of such action will bar prescription. But although the application for a sequestration is a measure directed against the debtor, and if the demand is opposed, a procedure arises, which, like any other depending action, might bar the currency of any prescription, of which he might otherwise have had the benefit, against the creditor making the application; yet, upon the final award of sequestration, that dependence is closed; and the sequestration is just the execution of the decree of the Court, divesting the bankrupt of the

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whole effects of which he is possessed, and vesting them in the creditors, through the intervention of a trustee. Its effect is to separate the debtor's effects at its date from the person of the debtor. It carries those effects to the creditors, for the purpose of being appropriated in payment of their debts; but in so far as concerns the debtor's subsequent acquisitions, new measures are necessary to attach them, and to subject them to the payment of the creditors. Now, such new measures being absolutely necessary, it seems to follow, that the power of taking these measures may be lost by prescription, like the power of enforcing any other right. The creditors under the sequestration form a corporate individual, who has, in the first place, acquired the debtor's whole existing funds at the date of the sequestration; and who, in so far as unpaid by those funds, continues a creditor against the acquirenda of the bankrupt for the balance. But the rights of the corporate body, in this last respect, may be lost by prescription, like those of every other creditor, unless that prescription is interrupted by measures taken directly against the debtor. And it is impossible to hold that any such effect can arise from proceedings, taken in the sequestration, merely for the management and distribution of the funds vested in the creditors. These proceedings consist of the steps taken for ascertaining the comparative rights of the individuals of which the corporate body is composed. They are merely acts of administration of the funds placed in their hands by the execution of the decree against the debtor. They are consequently measures which may exclude the currency of prescription in any question between each other and with the sequestrated fund. But they can have no effect whatever in barring any prescription running in favour of the debtor, against the claims which the corporate body of the creditors, or any of the individuals of that body, may have against either his person or any subsequently acquired estate, for the balance.

And, 3. That as the object of the present action was to have it found, that the respondent, Lady Hadinton, who had acquired, not a Scottish but a Russian succession, was not liable to the claims of the creditors, the proper question was not, whether the debts could have been enforced against Mr Gascoigne, but whether she, as taking under the law of Russia, was responsible for these debts, which she maintained she was not.

The House of Lords pronounced this judgment:—'The Lords 'find, that the debts due to the persons named and designed in the 'summons of the said respondents, or to their predecessors, authors,

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'or cedents, were not, at the time of the death of the said Charles Gascoigne, nor are now, null, void, or extinguished in law: And with this finding it is ordered, that the said cause be remitted back to the Court of Session, to review generally the interlocutor complained of; and, in reviewing the same, the said Court is especially to consider, whether, by the law of Russia, due regard being had to the proceeding in the sequestration, and its effect in preserving the rights of the creditors till their debts are fully satisfied, and to the communications between the said Charles Gascoigne, and also between the said Countess and the trustee under the said sequestration, the debts of the said creditors could now be enforced in Russia against the representative of the said Charles Gascoigne there; and for that purpose to obtain farther opinions of Russian lawyers upon a more full and accurate statement of the nature and effect of the process of sequestration, and of the aforesaid communications: And further, in the several processes brought against the said Countess and her husband, at the instance of Messrs Gibson and Balfour, and the late Mr Home of Paxton, particularly to consider the time and occasion of Stein's bills being made payable to the said Countess, and whether the said bills, or the sums recovered upon them, can or cannot be considered as effects of the said Charles Gascoigne, received by the said Countess in Scotland; and whether, if they can be considered as the effects of the said Charles Gascoigne received by the said Countess in Scotland, she is on that account liable to any, and what extent, to the said pursuers in those processes, or any of them: And after reviewing the said interlocutor, that the said Court do and decern in the said cause as to them shall seem meet and just.' *

LORD GIFFORD.—My Lords, There was a case in which Thomas Richardson and others are the appellants, and the Countess-dowager of Hadinton and James Dalrymple, her husband, are the respondents. I will state to your Lordships, as briefly as I can, the circumstances of this case; and, having so done, state to your Lordships what observations occur to me upon this, which is undoubtedly an extremely important case, involving a question of very considerable difficulty and nicety.

My Lords,—It appears that a gentleman of the name of Charles Gascoigne was a partner in a firm of Garbett and Company, mer-

* After certain proceedings under the remit, the parties settled the case.

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chants at Carron Wharf in Scotland; and so long ago as the month of June 1772, the personal estate of that Company, and of Mr Gascoigne as an individual, was on the application of Mr Gascoigne sequestrated, under the provisions of the statute of the 12th Geo. III. cap. 72. In consequence of that, the personal estate of Mr Gascoigne was vested in a gentleman of the name of Anderson, as trustee under that sequestration. Afterwards, in the year 1781, a gentleman of the name of Hogg was appointed trustee in the room of Mr Anderson; and the sequestration was renewed under subsequent Acts of Parliament, particularly the 23d of the late King, cap. 18. for the heritable property of Mr Gascoigne, as well as his personal effects. The same gentleman was appointed first interim factor, and in March 1784 chosen trustee, under that sequestration; and in consequence of his death in 1803, (for these proceedings have gone on ever since the year 1772, up to the very hour in which I am addressing your Lordships), a gentleman of the name of Henderson was appointed trustee in place of Mr Hogg; and the sequestration proceeded under the Act of 23d Geo. III.

My Lords,—Mr Gascoigne, for some years after the original sequestration, acted as factor to the trustee, until the year 1786, when he left Scotland, and went to reside in Russia. There he resided for a great number of years, until his death, which happened in the year 1806; and, during his residence there, it appears that he realized a very considerable property. Wishing to return to Scotland in the year 1798, propositions were made by a gentleman of the name of Elphinstone, on behalf of Mr Gascoigne, to compromise with his creditors; but that negociation proved ineffectual. The debts of this Company were extremely large. There had been a dividend of ten or twelve shillings in the pound paid, but a very large balance remained. Mr Gascoigne at this time proposed to pay the sum of L.10,000 to get relieved from that sequestration. The result however was, that the negociation entirely failed. In the year 1806, Mr Gascoigne died in Russia, conveying, by a will made in Russia, his succession to his daughter, the Dowager Lady Hadinton, who is one of the respondents in this case. After his death, proposals were again made by Lady Hadinton to compromise with the creditors; but these proposals were ineffectual, and no compromise took place.

My Lords,—It appears that, previous to Mr Gascoigne's death, certain bills on a person of the name of Stein had been drawn, payable to Lady Hadinton, but drawn certainly on account of Mr Gascoigne, then residing in Russia, and that Lady Hadinton, as the person named in those bills, ultimately obtained payment of them from Stein. In consequence of these circumstances, in the year 1812 actions were brought against Lady Hadinton, as her father's executrix, and against her husband; one by two persons of the name of Gibson and Balfour, who brought an action for reducing the bills under the statute of 1621; and another brought by a gentleman of the name of Home of Paxton, factor and manager for Messrs Douglas, Heron and Company, who

had been creditors of Mr Gascoigne for upwards of L. 20,000. They brought those actions against her as having received, in trust for her father, those bills upon Stein; and, by a summons, Mr Home concluded for payment of the balance due to Douglas, Heron and Company, of the debt and interest. June 16. 1824.

My Lords,—In consequence of these proceedings, Lady Hadinton, in order if possible to put an end to those claims, instituted, in the year 1816, an action of declarator; and it will be important to call your Lordships' attention to the conclusions of the summons in that action. Your Lordships will be thereby informed what it was that Lady Hadinton sought to have declared in that action. My Lords, that summons, after narrating shortly the same facts I have stated to your Lordships, proceeded to state, that, in consequence of Mr Gascoigne's residence and domicile in Russia, and by the laws of Russia, his debts were totally discharged and extinguished by prescription. It then goes on to state, 'that during his residence in Russia he held various em-'ployments under the Russian government, and became a public ac-'countant, liable to that government for large balances and otherwise, 'which, with other large debts which he had contracted in Russia to 'natives of that empire, amounted to a sum exceeding the funds which 'had come into his hands while he lived there, consisting of the 'salaries and other profits arising from his employments. That the 'said Charles Gascoigne had not the good fortune to obtain formal 'discharges from his creditors in this country; and finding, or sus-'pecting that they were disposed to withhold such discharges, in ex-'pectation that he would be able to realize a considerable fortune in 'Russia, and would return with it to his own country, and that they 'would pursue their claims against him, though the debts were extin-'guished by the Russian prescription as aforesaid; and the said 'Charles Gascoigne entertaining hopes that he would be enabled, 'through the liberality or munificence of the Russian government, 'under which he had held important situations, and in which he had 'been useful, to make an amicable transaction with the said creditors; 'and being desirous of conciliation with them, although he was not, in 'any respect, bound in law to pay the debts or balances thereof appear-'ing in the said sequestration, he did, of his own accord, make several 'offers to the said creditors; first, of the sum of L. 5000, and after-'wards of the sum of L. 10,000 Sterling, out of funds then in his 'hands in Russia, on condition of receiving from the whole of the 'said creditors, without exception, an ample and full discharge of all 'their debts.'

The summons then states, 'That the said Charles Gascoigne died 'possessed of considerable property in Russia, real and personal, but 'charged with, and liable to the payment of large debts due to credi-'tors, natives of that empire, and particularly subject to the result of 'a settlement of the above-mentioned accounts of long standing and 'of immense magnitude between the Emperor of Russia and him,

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'which, at this hour, are not settled; in consequence of which, 'according to the law and customs of Russia, said property cannot be 'affected by the creditors of the deceased, and far less by his foreign 'creditors, just or pretended, but remains in the absolute and uncon-'trolled disposal of his Imperial Majesty.' It then states the will of Mr Gascoigne, by which he named the Countess-dowager of Hadinton, his eldest daughter, his sole heir and executrix, who, upon his death, attempted an amicable settlement with the creditors under the sequestration in this country; but her attempts to compromise their claims were ineffectual: and it then concludes, 'that the following 'persons, original creditors, or heirs, executors, assignees, or other-'wise representing, and in the place of, original creditors under the 'said sequestration awarded against the said Francis Garbett and 'Company and Charles Gascoigne as an individual,' enumerating a great number of the creditors claiming under the sequestration who should be called in this action: and then it seeks to have it 'found, 'decerned, and declared, by decree of our said Lords, that the said 'pursuers' (that is, Lady Hadinton and her husband) 'are not ac-'countable in Scotland, to all or any of the creditors, or pretended 'creditors, defenders, or any other persons whatsoever, for their intro-'missions with, and administration of the estate, means, and effects of 'the said deceased Charles Gascoigne, heritable or moveable, real or 'personal, acquired and left by him at his death in Russia, and subject 'to the laws of that empire:' and that it should be declared, 'that 'all and each of the debts due, or pretended to be due, to the 'persons above-named and designed, or their predecessors, authors, or 'cedents, were, at the time of the death of the said Charles Gas-'coigne, and are now, and in all time coming, null, void, and extin-'guished in law:'—'that the said Ann Countess-dowager of Hadinton, 'and her said husband, pursuers, and all others, the family, children, 'and representatives of Mr Gascoigne, are discharged of the said 'debts or pretended debts;' and that the creditors should desist from molesting them on account thereof in all time coming.

My Lords,—Defences were lodged to this libel; and afterwards the actions brought against Lady Hadinton were conjoined with the process brought by Lady Hadinton and her husband. The action came on before Lord Gillies on 11th July 1816, who ordered the pursuer and her husband 'to state in a special condescendence, in terms of 'the Act of Sederunt, the facts they aver and offer to instruct in sup-'port of the conclusions of the libel, particularly as to the residence 'of Mr Gascoigne in Russia, and the law of that country as appli-'cable to this case; and when lodged, allows the same to be seen and 'answered.'

My Lords,—A condescendence was given in, in terms of this order, which was followed by answers for the appellants, in which they referred to an opinion they had just obtained from Mr Brockhausen, an eminent Counsel at St Petersburg, on the question of the Russian law;

and the respondents lodged a minute calling for an explanation of some parts of the answers, particularly of what related to the opinion of the Russian Counsel, and the appellants gave in an answer to that minute; and, on the 14th May 1818, the Lord Ordinary pronounced the following interlocutor:—'The Lord Ordinary having this day and formerly heard the Counsel for the parties, appoints them to give in 'mutual memorials upon the question, Whether the present case is to 'be determined according to the law of Scotland, without regard to 'the law of Russia, and that within twenty days; and further, with a 'view of expediting the cause, before answer, appoints the parties to 'prepare a mutual case for the opinion of Russian Counsel, whether it 'would be held, in the circumstances of the case, that the debts of 'Mr Gascoigne claimed under the sequestration are extinguished by 'the Russian law of prescription?'

In consequence of that, my Lords, a case was prepared by Mr Bell, advocate, approved of by the Lord Ordinary, and transmitted to Petersburg for the purpose of obtaining the opinion of Counsel there; and the opinion of two gentlemen, who are represented as being very eminent lawyers in Russia, was obtained, to which I shall have to call your Lordships' attention presently. Upon these opinions being returned, and on the case coming on before the Court, they pronounced the interlocutor which I am about to read to your Lordships:—'Upon 'the report of the Lord President, in the absence of Lord Gillies, and 'having advised the informations for the parties, the Lords repel the 'defences in the process of declarator and extinction brought at the 'instance of the Countess of Hadinton and her husband, and decern 'and declare in the terms of the conclusions of the libel in the said pro-'cess; and in the several processes brought against the said Countess 'and her husband at the instance of Messrs Gibson and Balfour, and 'the late George Home of Paxton, the Lords sustain the defences, 'assoilzie the defenders from the conclusions of the several libels in 'the said processes, and decern accordingly; and find neither party 'liable to the other in the expenses of process in the said actions, or 'any of them.'

My Lords,—In consequence of this interlocutor of the Lords of Session, an appeal has been brought to your Lordships' House; and, my Lords, I took the liberty of reading to your Lordships the conclusions of this summons of Lady Hadinton, because your Lordships perceive that, by the interlocutor which I have read, the Lords of Session decern and declare in terms of the conclusions of that libel. The consequence, therefore, of that interlocutor is this, that one of the terms of the conclusions of the libel being, that all the debts due to the creditors in Scotland, and who had come in and remained under sequestration, are declared to have been, not only at the time of the death of Mr Gascoigne, but at the time of the pronouncing that interlocutor, and in all time coming, null, void, and extinguished in law. That is so declared by the Court of Session.

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My Lords,—Several very important questions have arisen upon this judgment pronounced by the Court of Session:—1*st*, Upon the effect of the Russian law upon the debts contracted by Mr Gascoigne in Russia, which, indeed, is the principal question in the cause, and which branches itself into two or three questions; namely, first, as to the general effect of that law upon debts so contracted; next, upon the effect of a sequestration in preserving those debts against the law of prescription in Russia; and a third question also arose upon the effect of those communications, first, between Mr Gascoigne and his agent Mr Elphinstone and the trustee and creditors in Scotland, and afterwards on the part of Lady Hadinton herself, how far those communications and those offers would have the effect of interrupting that law of prescription which is said to arise in Russia, supposing the Russian law to be that by which the case is to be governed. My Lords, there were other questions subordinate in point of importance, but, at the same time, also not unworthy of attention, I mean with respect to these interlocutors, as affecting the actions of the creditors brought against Lady Hadinton; because your Lordships will perceive by this interlocutor, the defenders in those actions, Lady Hadinton and her husband, are assoilzied wholly from the conclusions of the several libels at the instance of those creditors; and consequently, if that interlocutor was right, those creditors are adjudged by that interlocutor to have no claim against her in respect of those bills of Stein which she received during the lifetime of Mr Gascoigne in Russia, and which were payable to her undoubtedly on account of her father.

Now, my Lords, with respect to the first proposition which is affirmed by this interlocutor, namely, that there being in Russia this law, that debts are not recoverable after they have been contracted ten years, and which is said by this interlocutor to have totally excluded those debts in Scotland, this question arises,—When debts are contracted in Scotland or in England, and which are recoverable in the courts of that country, and the debtor chuses to go and reside in a foreign country, by the law of which country debts cannot be recovered in that country after the period I have mentioned of ten years, whether the law of Russia, though it might be available by a party resident there, if he were sued in the courts of Russia, is to have the effect if that party should return to Scotland, or if property should subsequently accrue to him in Scotland, not merely of enabling him to oppose any claim made against him in the courts of Russia, but to have the effect of positively extinguishing and annulling those debts in Scotland? for that is the proposition which is adopted by this interlocutor, which affirms the terms of the conclusions of the libel. And I may here take the liberty of saying, that where a libel contains various conclusions,—though I know it is very often the practice of the Courts of Scotland, if they are of opinion one of those conclusions is supported, to decern generally in terms of the conclusions of the libel,—your Lordships see in this case, as in many others which I have seen

since I have had the honour of attending your Lordships' House, and before, the inconvenience which results from its being so stated, 'and decern and declare in terms of the conclusions of the libel,' if it had been confined to one, might have been correct in instances where it is not correct as to the whole. June 16. 1824.

My Lords,—Having in this case had the advantage of seeing the opinions delivered by the learned Judges in the Court below, undoubtedly I cannot but see that they have proceeded mainly upon that proposition, namely, that the effect of this prescription in Russia is to annul and extinguish, and prevent the recovery of those debts in Scotland. But, my Lords, though that undoubtedly is the effect of this interlocutor, and the result of the opinion of the Judges, yet I observe all of them consider, that if Mr Gascoigne himself, after having resided in Russia from the year 1786, when he went there, for more than ten years, had returned to Scotland, that he could not have availed himself in Scotland of this decennial prescription which had run in Russia. They all agree that, under the sequestration, the creditors, if he had returned, would have had a right to pursue him for the debts, and that it would not have been enough for him to have said, You cannot pursue me for those debts; for they would have said, Scotland is the place where those debts were contracted,—Scotland is the place where we are pursuing you; and you cannot protect yourself by the effect of a law of a foreign country, in which you have been residing for a time, to release you from the effect of the debts incurred in Scotland; but you are still answerable. All the Judges agree, that, if he had returned, the debts would have been recoverable against him. Lord Balgray, who first delivered his opinion, says, 'If Mr Gascoigne 'had returned to this country, and brought his effects with him, then 'you could have laid hold upon those effects, or you might have laid 'hold of his person under the sequestration.' Lord Balmuto, who followed him, says, 'If Mr Gascoigne had come to this country, then 'you would have applied the law of this country to him—you might 'have laid hold of his property or his person; but he never came to 'this country, he died in Russia; and therefore, I apprehend, the law 'of Russia must be applied.' My Lord President also states, 'But 'they, the creditors, say, If Mr Gascoigne had returned to this country, 'he could not have pleaded the Russian prescription; and therefore his 'heir cannot do so either. I think the creditors are right in the first 'point, that if Mr Gascoigne had come to this country he would have 'been liable. The creditors would have been entitled to say, that the 'debts were contracted here; you are now domiciled here, and we will 'attach your person for payment of these debts. We don't inquire, and 'we have no right to inquire, where you get funds to pay those debts: 'You may find those funds where you please.' And, my Lords, that I apprehend is a correct view of the subject, as applied to Mr Gascoigne himself; not only as it follows from the opinions of those learned persons, but a case was cited which had occurred in England, and it is admit-

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ted, that the principles to be applied in that case would be equally applicable to an English or a Scotch case—I mean the case of Smith v. Buchanan, in the time of Lord Kenyon, in which he lays down the law upon that subject. That was an action brought for a debt for goods sold and delivered. The defendants pleaded, in discharge of the personal estate and effects of the defendants, that by a law of the state of Maryland, made on the 10th April 1787, intituled, 'An Act 'respecting insolvent debtors,' it was enacted, that any debtor for any sum above L.300, might apply by petition to the Chancellor of that State; and that, complying with the terms of that Act, he would be for ever discharged from the debts which he then owed. They then alleged, that after the making of that law, the defendants were joint debtors for more than L.300 in Maryland; that they petitioned the Chancellor, and offered to deliver up all their property to the use of their creditors, with the schedule and list of creditors thereunto annexed; that the Chancellor gave due notice to the creditors, and administered the oath to the defendants, appointed a trustee on behalf of the creditors, and directed the defendants to execute a deed to him of all their property, in trust, for their creditors; that thereupon the defendants did execute a deed to the trustee, and deliver to him all their property, who certified such delivery to the Chancellor; and thereupon the Chancellor, according to the Act, ordered, that the defendants should for ever thereafter be acquitted and discharged from all debts by them owing or contracted before the date of the deed. My Lords, to that it was replied, that the causes of action did not accrue in Maryland, but had arisen in England, within the kingdom of England, and that therefore they were not bound by this discharge of these defendants in Maryland, where they were then domiciled; for that England was the place where the debts were contracted, they were sued in England, and by the law of England, therefore, the question must be determined. My Lords, that replication was demurred to. It came on to be argued, and the defendants argued, that, by the law of Maryland, they were discharged of all their debts, and therefore were discharged from these. The case, however, was felt to be so clear, that the Counsel on the other side were stopped, and Lord Kenyon gave the judgment in these terms:—'It is impossible 'to say that a contract made in one country is to be governed by the 'laws of another. It might as well be contended, that if the state of 'Maryland had enacted that no debts due from its own subjects to the 'subjects of England should be paid, the plaintiff would have been 'bound by it. This is the case of a contract lawfully made by a 'subject in this country, which he resorts to a court of justice to 'enforce; and the only answer given is, that a law has been made in 'a foreign country to discharge these defendants from their debts, on 'condition of their having relinquished all their property to their 'creditors. But how is that an answer to a subject of this country, 'suing on a lawful contract made here? How can it be pretended

'that he is bound by a condition to which he has given no assent, June 16. 1824.
'either express or implied? It is true, that we so far give effect to
'foreign laws of bankruptcy, as that assignees of bankrupts deriving
'titles under foreign ordinances, are permitted to sue here for debts
'due to the bankrupts' estates; but that is because the right to per-
'sonal property must be governed by the laws of that country where
'the owner is domiciled.'—Then he goes on to mention the cases which had occurred upon that subject.—My Lords, Mr Justice Lawrence says, 'The point rests solely on the question, Whether the law
'of Maryland can take away the right of a subject of this country to
'sue upon a contract made here, and which is binding by our laws?
'This cannot be pretended; and therefore the plaintiffs are entitled
'to judgment.'

Your Lordships perceive the result of this judgment is, that the interlocutor having decerned in the conclusions of the libel, one of which conclusions is, that these debts are null and extinguished, if to-morrow any property could be discovered in Scotland which had belonged to Mr Gascoigne, those creditors are, by this interlocutor, found to have no right whatever to pursue that property, because their debts are absolutely null and extinguished. My Lords, it is admitted, that if Mr Gascoigne had returned into Scotland,—nay more, if any effects had come into Scotland, where they could have been attached, they would have been liable to be attached under the sequestration. It appears to me, therefore, that even on the principles adopted by the learned Judges themselves, the interlocutor cannot be supported, to the extent to which it has been pronounced, that the debts are null and extinguished. It is another question, to which I shall presently call your Lordships' attention, whether, though these debts are not extinguished by the Russian law and proclamation, under the circumstances, Lady Hadinton, who is a Russian representative of this gentleman, can be sued in Scotland in respect of that Russian representation, in respect of effects received by her in Russia? That is a very important question, and one which, it appears to me, has not received all that consideration in the Court below to which it is entitled; but, my Lords, having stated thus much to your Lordships, I trust I have shewn sufficiently, that it is impossible to support the interlocutor that these debts are extinguished; for, taking the language of Lord Kenyon, whether it was the common law, or any law they have themselves introduced, it is impossible that, by a person's removal to Russia, or any other country, where a different law prevails than that in Scotland, he can discharge himself from those debts; but he must, if he returns to that country, be liable to be sued, leaving it open to him to avail himself of any defence which the law of Scotland enables him to set up against those demands. Therefore, my Lords, to the extent to which this interlocutor has gone, I apprehend it is impossible to sustain it, for the reasons I have stated to your Lordships.

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But then, my Lords, comes that which is an extremely important and difficult question; supposing these debts, though not barred in Scotland, yet were not recoverable in Russia against Mr Charles Gascoigne, whether Lady Hadinton, having succeeded to his property by the law of Russia, that property being in Russia, can be sued in Scotland for those debts, which, if sued for in Russia, could not have been recovered against him? Now, my Lords, this point, as I have stated to your Lordships, appears to me not to have been sufficiently considered by the Court of Session, they having come to the conclusion, that although those debts were not barred as against Mr Gascoigne himself if he had returned to Scotland, or brought effects there, yet they were utterly extinguished as against his representatives. They have, of course, coming to that conclusion, at once pronounced in favour of Lady Hadinton in the action of declarator; and at once, without further consideration, assoilzied Lady Hadinton and her husband from the actions brought against her by some of the creditors; although in that action it was contended, that she had acquired property in Scotland, during the lifetime of her father, which was liable to her father's debts, declaring that those debts were null and extinguished, and at once extinguished and void in respect of recovery against her; and, of course, she was assoilzied from the actions by that declaration.

My Lords,—It appears to me that another question, submitted to the Russian lawyers, has not yet been answered by them so satisfactorily as to enable your Lordships at once to affirm this interlocutor, proceeding upon the ground of those opinions. I observe even the learned Judges themselves feel, that those opinions are not sufficiently precise upon the subject, and I am not at all surprised that they should feel so. I will shortly call your Lordships' attention to the case which was stated to these lawyers, and will read to your Lordships their opinion. One question certainly was, supposing the law of decennial prescription in Russia to apply to debts generally, whether the effect of a Scotch sequestration was not, to keep alive the debts proved under that sequestration, and therefore to prevent the effect of the law of Russia,—that depends very much upon the effect of a Scotch sequestration. The Scotch sequestration differs in this respect from the English commission of bankrupt: The effect of an English commission of bankrupt is, that by the assignment to the assignees, not only the personal property of the bankrupt at the time, but all his future personal property, passes to the assignees; so that the assignees under an English proceeding, without further proceedings, may recover, in their own names, any personal property subsequently acquired by the bankrupt. A Scotch sequestration has no such effect; it merely passes the property the person possessed at the time of the sequestration; and if he acquires any personal property, it is necessary, in order to give the trustees possession of it, to have a supplemental sequestration. But the effect of a Scotch sequestration, I apprehend, is, that it prevents time running against those debts: indeed, there is an express statute,

particularly the 54th of the late King, which follows the former provisions upon this subject, by which it is enacted, by the 52d section, 'That the making production of the ground of debt or certified account, with the oath of verity aforesaid, in the hands of the interim factor, Sheriff-clerk, or trustee, or in the Court of Session, shall have the same effect as to interrupting prescription of every kind, from the period of such production, as if a proper action had been raised on the said grounds of debt against the bankrupt and against the trustee.' Now, therefore, although the trustee under the Scotch sequestration could not, without a supplemental sequestration, recover the effects subsequently acquired, I apprehend the creditors have still a right to pursue the bankrupt for the balance of their debts, as has been done in this case by Gibson and Balfour, and by Mr Home as factor for Douglas, Heron and Company; for they sue against Lady Hadinton and her husband for the balance due to them on account of the debts they have proved under the sequestration. It was therefore very important, in presenting this case to a Russian lawyer, in order to determine how the Russian law applied to this case, that as clear an explanation as possible should be given to that lawyer of the effect of the Scotch sequestration.

My Lords,—The case which is stated for the opinion of Russian Counsel is rather short. It states the effect of this partnership by Sir Charles Gascoigne and Mr Garbett, and then it states, that 'certain 'proceedings took place in Scotland, under the bankrupt laws of that 'country, against the Company, and against Sir Charles Gascoigne as 'a partner of the Company, for obtaining payment of the debts due by 'them. It is contested between the parties, whether those proceedings 'have the effect of interrupting or excluding prescription, which, by 'the law of Scotland, after a certain number of years, extinguishes or 'cuts off the claims of creditors for payment of debts on which no pro-'ceedings have been taken sufficient to bar such prescription; and it 'will be necessary therefore, that, in making your answer to the case, 'you alternately suppose, on the one hand, that the debts would be 'held as cut off in Scotland by prescription, were Sir Charles Gascoigne 'alive, and in that country; or, on the other, that the debts are still 'in Scotland subsisting debts, for which Sir Charles Gascoigne, if alive, 'would be liable; or his property, or those who succeed to him in it, 'now that he is dead, might be affected by the law of Scotland.' Then it goes on to state, that 'the debts claimed in Scotland against the 'Company, and against Sir Charles Gascoigne, amounted originally to 'L.129,447; and dividends have at several times been paid to the 'amount of 11s. 3d. in the pound upon those debts, leaving a large 'balance still due. Sir Charles Gascoigne, after having, till the year '1786, acted as manager for his creditors, left Scotland in that year 'and went to Russia. He was there naturalized. He died in Russia 'on 20th July 1806.'—That 'Sir Charles Gascoigne's residence in 'Russia was well known to all or many of his creditors in Scotland;

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'but no judicial demand was made against him in Russia by his British 'creditors, from the moment of his landing in that empire to his death.' —That 'during all this time, and down to the present day, the pro- 'ceedings in bankruptcy have been going on in Scotland, where funds 'have been gradually collected and distributed to the extent already 'mentioned; but no final distribution has yet taken place. About the 'year 1799 or 1800, Sir Charles Gascoigne appears to have become 'desirous of obtaining a discharge from his British creditors, of all 'claims which might be open to them against his person, or against his 'recent acquisitions; and certain overtures were made at his desire, 'by his friends, to compound for such a discharge by the offer of a sum 'of money, but without the acknowledgment of any specific debt. 'The correspondence in which these overtures are mentioned and dis- 'cussed, is here referred to, consisting of the first six numbers of the 'annexed letters. This negociation was never concluded.'

It then states the will of Sir Charles Gascoigne, made in Russia, and that 'all his estate and effects, acquired since the bankruptcy took 'place in Scotland, lay in Russia, which was the place of his domicile 'at his death. Lady Hadinton accordingly entered into the adminis- 'tration of her father's effects, according to the forms observed in 'Russia. She became desirous, as her father had been, to obtain a 'discharge from the British creditors, of any claim which they might 'have upon her father's property, so acquired in Russia; and a corres- 'pondence and negociation took place between persons acting on her 'behalf and the trustee for the creditors. That correspondence is also 'hereunto annexed.'—'This negociation also proved ineffectual; and 'an action has been commenced in the Court of Session in Scotland, 'on the part of Lady Hadinton, for having it found and declared, (ac- 'cording to a form of action known in Scotland), that Lady Hadinton 'is not accountable in Scotland, to all or any of her father's creditors 'in Britain, for any estate or effects which may have been derived to 'her from her father's death in Russia, as being property situated there, 'and subject to the laws of that empire; and generally, that the debts 'that had been contracted by him in Scotland or Britain, before he 'left Scotland, are entirely cut off and extinguished. It has in parti- 'cular been maintained, that by the Russian law, if no demand, process, 'or action for civil debt, have been instituted in Russia during ten years 'from the date of the origin of the claim, or if any legal demand or 'action, though once instituted there within that period, has not 'been persisted in for a period of ten years, the right of action upon 'such debt is annulled.'

Then, my Lords, these are the questions. '*First*, Without having 'any regard to the proceedings in Scotland, or the foreign origin of 'the debts, be pleased to say, Whether, by the law of Russia, a person 'who takes, under the will of a father, the estate or effects which be- 'longed to him, does thereby become responsible in Russia for his 'debts? And if so, whether for his foreign debts, as well as for those

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'due in Russia? Whether there is any difference between such re-
'sponsibility, supposing it to be incurred, and the responsibility of the
'original party, either as to endurance or otherwise? Whether there
'be, in the law of Russia, any limitation or prescription, by which the
'right of a creditor to demand his debt, either from the debtor him-
'self or from his heir, is discharged or cut off in consequence of the
'lapse of time, ten years, or any other space of time? And be pleased
'to explain, Whether, by any form of judicial or extrajudicial demand,
'this discharge, from lapse of time, may be interrupted; and what the
'distinguishing character of such interruption is? Whether, if any
'judicial demand has been made in Russia, and the creditor has ceased
'to persist in that demand, the debt would be discharged by prescrip-
'tion? and what period of cessation from such action or demand, is
'requisite to produce this effect?'—Then, '*secondly*, Taking the sup-
'position that, by the law of Scotland, the debt would be discharged
'by prescription, and that the proceedings in bankruptcy would have
'no effect in preventing the rule of prescription from applying, be
'pleased to say, Whether the creditor would still be admitted to make
'his demand in Russia against the original debtor, if alive? or against
'his heir taking his succession after his death? What would be the
'effect, in the Russian tribunals, of the correspondence between the
'parties, in reviving a responsibility which otherwise would have been
'held as discharged?'

Then there was a third question. 'Taking the supposition that the
'proceedings in bankruptcy in Scotland, if not overruled or counter-
'acted by the Russian law of prescription, have kept the debt alive
'there, so that it might be demanded from the original debtor, if still
'in life and in Scotland, or from his heir, being in that country, and
'having effects derived from the will of the original debtor, be pleased
'to say, Whether would the debt be demandable also in Russia, either
'from the original debtor, if alive, or from his heir in possession
'of his estate and effects? or would any Russian law of prescription
'be held to discharge the person of the debtor, or his effects, from
'responsibility for the debt?' And then, 'Would the correspondence
'already referred to, have any effect in establishing in the Russian tri-
'bunals a responsibility not otherwise incurred?'

This case was submitted to two gentlemen, one of the name of Hart-
mann, and another of the name of Brockhausen; and Mr Hartmann
states the law of Russia to be as I am now about to read to your Lord-
ships. 'As soon as the heir takes possession of the property of the
'deceased, he becomes responsible for the debts and other obligations
'of the deceased, not only to the whole amount of what he has inherit-
'ed, but as far as his own personal means will extend; and that res-
'ponsibility attaches to debts both in and out of Russia.'—'There is
'no difference between such a responsibility and that of a first debtor,
'either by its duration or otherwise.' Then as to the prescription, he
says, that 'the 4th section of the Imperial Manifest of the 28th June

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'1787, fixes the prescription of ten years for every process whatever: 'and, after the expiration of this period, the right of a creditor to 'demand his debt, either from the first debtor or from his heirs, becomes 'completely null and void; and this annihilation of the right, after the 'lapse of ten years, can neither be prevented nor interrupted by judi- 'cial or extrajudicial forms. In the event of a judicial demand having 'been made, and that the creditor has ceased to persist in it, ten years 'must elapse after that cessation, to produce the effect of prescription.' Then he says, 'If, by the laws of Scotland, a debt becomes annihi- 'lated by prescription, the creditor, in that case, cannot make his de- 'mand, in Russia, against the first debtor, or against the person 'who has inherited from him after his death, supposing the time fixed 'for the prescription in Scotland to be also at least ten years.' Then he says, with respect to the correspondence—'It is true that, accord- 'ing to the military regulation, admitted in all civil causes, the cor- 'respondence which has existed between the parties interested may 'give rise to motives for entering upon a new process; but as that re- 'gulation, as well as the ordinance of 5th November 1723, are only 'expressed in general terms upon the forms of proceedings, and as no 'positive law exists, declaring that a private or particular correspon- 'dence, entered upon between the debtor or his heirs with the credi- 'tors after the prescription has been in operation, might oblige that 'debtor to pay his creditors a debt already superannuated, it is impos- 'sible to guarantee the fortunate result of such a process. Still it is 'true, that there exists similar instances where the Supreme Ruling 'Senate has pronounced in favour of the creditors; but these decisions 'have only been given in special cases, and they have not been promul- 'gated as established laws. Further, no precedents can ever be con- 'sidered as laws. In short, in entering upon such a process, the adverse 'party must be upon the spot; and the duration of such a litigation is 'not only very long, but subject to considerable expense.' Then he says, 'Supposing the bankrupt proceedings in Scotland have had the 'effect of perpetuating and continuing the debt, and that there had 'been a formal judgment against the debtor, of a date within the 'period of ten years, then the creditors might demand in Russia the 'payment from the first debtor, in case he was alive, or, if he was dead, 'from his heirs.' Then he says, that 'the correspondence which has 'subsisted between the parties interested may contribute to establish, 'before the Russian tribunals, a responsibility, as it has been before 'observed.' I think your Lordships will perceive, that these answers are not conclusive at all of the questions between the parties. They are hypothetical answers, and no determinate answer is given on the effect of the Scotch sequestration; and indeed I am not surprised at that, considering the manner in which the question on the Scotch sequestration was proposed to that learned person.

Mr Brockhausen agrees, as to the effect of Russian law, with the opinion given by Mr Hartmann. Then he says, 'Any debt not judi-

'cially claimed, or process, although instituted, and not followed up June 16. 1824.
'during a lapse of ten years, is annulled and condemned to eternal
'oblivion by the law alone, without intervention of the debtor.—Mani-
'fest of the year 1787, 28th June. But when there is no interval of
'ten years from one petition to another, or of any other proceeding
'judicially verified; the reclamation or process remains in full force.'
So that your Lordships perceive that Mr Brockhausen is of opinion, as indeed is to be collected from the opinions of the other gentleman, that if a proceeding had been instituted in Russia, for the recovery of a debt, which was continued there, the ten years' prescription does not run in favour of the debtor, until the cessation of that civil proceeding; and therefore, my Lords, the great question in this case would be, (supposing it was to be determined by the law of Russia), Whether the effect of a Scotch sequestration is not to keep alive, in the nature of a legal proceeding, the right of the creditors until they are fully discharged, or until the party himself has obtained a discharge under the sequestration?

He says, in answer to the fourth question, 'The debtor may produce
'the act of prescription the day following the last day of the expiration
'of the tenth year.' Then he says, 'According to the Manifest of
'1787, no reclamation would be any longer admitted, either against
'the debtor, if in life, or against his heirs representing him after his
'death. It would be equally the same if there was a prescription of a
'foreign tribunal.' Then he says, with respect to the correspondence, those negociations which had taken place for the purpose of relieving Mr Gascoigne from the effect of those debts,—'The correspondence
'would necessarily revive motives to enter upon a new process, if ten
'years have not elapsed from its date. If the debts were recognized
'as valid by a foreign tribunal, and that there was a formal judgment
'against the debtor, of a date within the period of ten years, then a
'judicial execution against the property of the debtor, or of his heirs,
'would be admitted in its full vigour; and there exists no law against
'it. The correspondence, written or signed by the hand of the debtor
'or of his heirs, may serve as a motive for establishing in Russia a new
'process in due form, according to the ordinance of 1723, 5th Novem-
'ber; but the correspondence of a third person cannot be sustained
'as proof, unless it is accompanied by a full power; so that to enter
'upon such a process, it would be necessary for the adverse party
'to be upon the spot.—*N. B.* The progress of such process is very
'slow, and the expense considerable.'

My Lords,—Those opinions were sent back by a gentleman of the name of Cramer, whose letter is added to the Appendix, in which he apologizes for the delay. It appears that the legal gentlemen in Russia are not more expeditious in giving opinions than the legal gentleman in this country. The opinions were laid before the gentlemen in Russia in the month of April, and they got no answer till the

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'month of September. He says, 'After receipt and perusal of 'the Memorial intrusted to my care, I applied for opinions to Mr 'Brockhausen and Mr Hartmann, both lawyers of first standing 'here, and possessed of foreign languages, requesting an immediate 'solution to This, however, I could not obtain, after all my plaguing 'and teasing them, until of late, when I found their opinions in part 'entirely opposite to each other, which would have embarrassed any 'of the parties on your side of the water. I then resorted to new con- 'ferences to discuss the matter; and the lawyers have now given their 'opinions, which I enclose, and hope you will find agree, pretty much 'grounded upon our laws. The only point which, in my humble opi- 'nion, is the chief point of inquiry, is not exactly ascertained, and even 'in conversation yielded to by both lawyers. It is ad quæst. II. §. 'How far private correspondence, during the lapse of time prescribed 'by our laws (say ten years) is in favour of one of the parties con- 'tending to recommence and re-establish a suit at law.' Then he makes some remarks upon those opinions.

My Lords,—I must confess that, attending to those opinions and to the judgment which has been pronounced below, I do not feel myself in a situation to offer to your Lordships any decided opinion upon the effect of this law of Russia, or the answers given by these gentlemen; and I should therefore propose to your Lordships, that this part of the cause should be remitted to the Court of Scotland, to obtain, if possible, a more decided opinion on the effect of a Scotch sequestration on property sued for in the Courts of Russia. It appears to me, a case should be framed, stating positively the effect of a Scotch sequestration in Scotland, as to interrupting prescription in Scotland, and the effect of that proceeding in the nature of a judicial proceeding in respect of preserving those debts; and upon such a case one cannot but entertain a hope, that a more satisfactory opinion may be obtained from the Russian lawyers upon that subject. So also upon the effect of the correspondence. Some of the learned Judges conceive, that that correspondence ought not to be received, because it was in the nature of an offer of compromise, which in the law of Scotland is wholly disregarded; but that does not appear to be the effect of the opinion of the Russian lawyers. They seem to be of opinion, that in Russia the effect of that correspondence would be to interrupt prescription, which would otherwise run against debts; and with respect to the actions brought against creditors, it appears to me, that the Court below, deciding upon that point, in which I wholly differ from them, namely, that those debts are wholly extinguished in Scotland, have contented themselves, on coming to that conclusion, in dismissing the actions against Lady Hadinton. In those actions a very different question arises, not only how far she, as a Russian representative, is subject to those debts, but whether, in the lifetime of her father, acquiring property in Scotland in trust for her father, that pro-

perty is not liable to those debts. That question is not decided at all. It may turn out on an investigation of this case, (but on that point it is impossible to give an opinion without knowing how the fact is), that this property may not be liable to those debts; but when I see it stated, that if property had been acquired by Mr Gascoigne in Scotland that would have been liable to those debts, it is most material to ascertain whether this property, which it is alleged that she received in trust for her father in Scotland, may not, independently of those nice questions arising on the Russian law, be still liable in those actions brought by the persons to whom I have referred your Lordships, Gibson and Balfour, and Mr Home. These questions have never been solemnly discussed in the Court below: They say, In our opinion, those debts, though contracted in Scotland, are in Scotland absolutely null and extinguished, and cannot be enforced by those creditors against Lady Hadinton; and if not against Lady Hadinton, not against any other person: they say, Those actions by those creditors cannot be sustained, because their debts are extinguished, and because Lady Hadinton cannot therefore be liable to the payment of those debts, or to answer for this money received under those bills.

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My Lords,—Unfortunately, as your Lordships must have collected from what I have stated, the questions in this case are questions, if they shall arise on the Russian law, of great nicety and great difficulty. My Lords, I cannot help throwing out this, that I think the question as between the creditors and Lady Hadinton,—she deriving her title to this property as a Russian representative,—must be decided as between the creditors and her, as it would be decided between them and a Russian, if a Russian had arrived in Scotland. I throw out that as the present impression on my mind, not as a conclusive opinion, but as one deserving great consideration. If, on the answer to those questions, it shall appear that, by the law of Russia, those debts could not be recovered there, because a person in Russia, acquiring right by Russian law, would in Russia be exempted from the payment of those debts, it would be difficult to say how, if this Russian came to Scotland, he would be affected in Scotland, he being relieved by the law of Russia from those debts; and if that be the law in the case of a Russian, it is difficult to say how it can be different, if it is in the case of a Scotch lady. I have thrown this out, (thinking that probably what I have stated to your Lordships may be conveyed to the learned Judges in the Courts of Scotland), as a most important point to be considered; but, feeling as I do, and, if your Lordships shall concur with me in that view, that part of this interlocutor cannot stand, namely, that part of the interlocutor which has found these debts null and extinguished; it appearing to me, that the Court below has proceeded mainly on that ground, not only in the action of declarator, but in those actions which the creditors have brought against her, and which are conjoined in this process, I shall propose that your Lordships shall find, first, that the debts due to the persons named in the summons of

June 16. 1824. the respondents were not, at the death of Sir Charles Gascoigne, nor are now, null, void, or extinguished at law. I should propose, next, that the cause should be remitted back to the Court of Session in Scotland to review generally the interlocutor complained of; and, in reviewing the same, that the Court should especially consider, whether, by the law of Russia, due regard being had to the proceeding in the sequestration, and its effect in preserving the rights of the creditors till their debts are fully satisfied, and to the communications between the said Charles Gascoigne, and also between the said Countess, and the trustee under the said sequestration; the debts of the said creditors could now be enforced in Russia against the representative of the said Charles Gascoigne there; and for that purpose, the Court should obtain further opinions of Russian lawyers, upon a more full and accurate statement of the nature and effect of the process of sequestration, and of the aforesaid communication: and further, in the several processes brought against the said Countess and her husband, at the instance of Messrs Gibson and Balfour, and the late Mr Home of Paxton, particularly to consider the time and occasion of Stein's bills being made payable to the said Countess, and whether the said bills, or the sums recovered upon them, can or cannot be considered as effects of the said Charles Gascoigne, received by the said Countess in Scotland; and whether, if they can be considered as the effects of the said Charles Gascoigne received by the said Countess in Scotland, she is on that account liable to any, and what extent, to the said pursuers in those processes, or any of them; and, after reviewing the said interlocutor, with these findings and directions, that the Court shall do and decern as to them shall seem meet and just.

My Lords,—I ought to apologize to your Lordships for the time I have taken in stating to your Lordships the nature of this case, and the observations which have occurred to me upon it; but really, after paying great attention to this case, I could not, consistently with justice to the parties, with a view to the findings and judgment I now move your Lordships to pronounce, refrain from making these observations, thinking that probably they may tend to assist in the further consideration of this case in the Court of Scotland. The point is undoubtedly one of great difficulty and great novelty, for I have not been able to find any case bearing precisely upon this question; and therefore it was, that I have been induced thus long to detain your Lordships.

Respondent's Authorities.—Huber de Conf. Leg.; 1. Voet, 8. 30. and 44. 3. 12.; Randall, July 12. 1768, (4520.); Kerr, February 20. 1771, (4522.); Campbell, November 23. 1813; (F. C.); Delvalle, March 9. 1786, (4525.); 1. Bell, 565.

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(Ap. Ca. No. 66.)