

cy, it would be especially unreasonable to oblige the poor debtor to contest the goodness of the debt, as he had surrendered up not only his effects, but his books.

No 95.

That the execution of the commission was not solely a protection against diligence, but a discharge of the debt.

' THE LORDS adhered.'

Act. Boswel.

Alt. Wedderburn.

Clerk, Kirkpatrick.

Fol. Dic. v. 3. p. 228. D. Falconer, v. I. No 120. p. 147.

1746. November 4.

CHRISTIE against STRAITON.

No 96.

Found as
above.

Two cases came before the Lords on the 21st of July 1746; one between Marshall and Yeaman & Spence in company, No 95 p. 4568.; the other between Alexander Christie merchant in Montrose, and Samuel Straiton of London, in both which they found, " That the pursuers were barred by the defenders having complied with the statute of bankruptcy in England, from recovering payment of debts due prior to the debtors bankruptcy out of effects thereafter acquired by them;" and the interlocutor in that of Marshall against Yeaman & Spence was acquiesced in, it being on all hands admitted, that the debt was contracted in England.

But in the other case of Christie against Straiton, it being controverted, whether the debt was to be considered as contracted in England or Scotland; Christie reclaimed, and the bill and answers coming this day to be advised, the fact appeared to be this: That for a course of years there had been a traffic between Christie and Straiton, whereby linen and other goods, proper for the London market, were purchased, and sent by Christie to Straiton at London, to be disposed of there for their joint-accompt; and towards purchasing Straiton's part of those goods, others were sent down by Straiton to Christie, fit for the market in Scotland; and there being a balance arising, due to Christie from this traffic, he obtained decree for the same before the Court of Session, and thereon arrested in the hands of certain persons in Scotland, who had become debtors to Straiton posterior to his compliance with the statute of bankruptcy in England.

It was argued for Christie, That as the balance due to him arose from the price of goods sent by him from Scotland, Scotland was to be considered as the *locus contractus*. But the Lords were of opinion, That as this was a debt arising from a copartnery, which was to take its effect in London, where the goods in copartnery were to be disposed of, and where the subject was to be accounted for, it was to be considered as a debt contracted in England.

This fell to put an end to the question, if the judgment given, and now final, in the other case of Marshall against Yeaman, was to be followed. But as cer-

No 96.

tain of the Judges now present had been absent on the 21st July, when the decision was given in that case, and differed in opinion from it, the general point came again to be argued among the Lords in this case.

It was by those who disapproved of that judgment, said, That the statute of bankruptcy in England could not affect a Scotsman residing in Scotland, so as that he could not sue execution in Scotland even for a debt contracted by the bankrupt in England, as it could have no operation in a foreign country, or oblige any other than such creditors as were subject to the law of England to enter their claims before the Commissioners, or in default thereof to lose their debt. *Extra territorium jus dicenti impune non paretur*; and reference was made to Voet on this subject, Tit. *De Statutis*, N. 5.

Answered, That the statute of bankruptcy was not pleaded to have its effect from any supposed authority of the laws of England over this or any other country, but from general principles of law, such as, *imo*, That a debt once extinguished in the place of the debtor's domicil, cannot be again reared up in another country: And the compliance with the statute of bankruptcy in England has the same effect as if the debtor had obtained a decree absolutor in any Court there, which sentence would avail him *ubivis loci*. *2do*, Personal qualities imposed upon any one by the laws of the place of his residence follow him *ubivis loci*; and thus a man considered by the law of his domicil as in a state of minority, prodigality or bankruptcy, retains these characters in whatever place he may resort to, for which the authority of Rudenburgius, in his Treatise *De jure quod oritur ex statutorum diversitate*, C. III. Tit. 1. § 4. was referred to as in point.

Replied, That it is admitted, that where the debt is once duly extinguished any where, it cannot be again revived in another country; and which is the case where a debtor obtains decree absolutor in a suit brought by the creditor against him in the place of his domicil, because the creditor, by bringing the suit, has subjected himself to the jurisdiction. But suppose such absolutor to be obtained in England in absence of the creditor, such absolutor could have no effect in Scotland, and that is what applies to the present case. And the doctrine that personal qualities imposed by the laws of the place of one's residence follow him *ubivis loci* was denied; and on the contrary, it was said that *no comitas* in any country ever regards such qualities imposed in another country: Take the case of *cessio bonorum*, which, though it imposes a quality strictly personal, as it only protects the person, but does not discharge the debt, yet, should a debtor be pursued in England, though for a debt contracted in Scotland, he would not be heard to shelter his person on pretence of a *cessio bonorum* obtained in Scotland after contracting the debt, much less should one, pursued in Scotland for a debt contracted in England be allowed to avail himself of a statute of bankruptcy obtained in England, which protects both person and effects.

THE LORDS " adhered to their former interlocutor of the 21st July last, whereby they had on report found, that Alexander Christie, the pursuer, is barred by Samuel Straiton's compliance with the statute of bankruptcy, vouched by the Lord High Chancellor's certificate, from recovering his payment out of the effects acquired by the said Samuel Straiton after the said statute of bankruptcy."

Kilkerran, (FOREIGN.) No 2. p. 203.

* * D. Falconer reports the same case :

SAMUEL STRAITON, merchant in London, having had a commission of bankruptcy sued out against him, Alexander Christie, merchant in Montrose, his prior creditor, arrested his effects in Scotland, acquired since the execution of the commission.

Straiton drew bills payable to John Spence merchant in London, upon his debtors, in whose hands the arrestments had been used, and they upon this called, in a multiplepoinding, Christie and Spence, who in that process acknowledged that he was only trustee for Straiton.

The foundation of Christie's debt, was bills drawn by Straiton upon, and accepted by him, and goods commissioned from Scotland, to be disposed of in London on their joint account.

Besides the arguments made use of in the cause decided 20th June 1746, Marshall against Yeaman, No 95. p. 4568, to which reference is here made, it was *pleaded*, That this debt was contracted in Scotland, and therefore could not be affected by the commission of bankruptcy.

On the other hand it was *urged*, That the debt behoved to be considered as contracted in England ; for that by drawing a bill, Straiton became liable to the porteur ; which claim was made over to Christie upon his payment, and the commissions related to a co-partnery which was carried on in London, and therefore that was to be looked upon also as the *locus contractus* with regard to them.

Pleaded for Christie, That there could not be a debtor without a creditor, and it being the furnishing of goods in Scotland, which produced the debt, therefore that behoved to be looked upon as the *locus contractus* ; and a foreigner not contracting in England could not be obliged to observe the usual notifications in the English Gazette : So that it could noways be imputed to him, that he had neglected to insist for his interest before the commissioners.

THE LORDS, 21st June 1746 " Found that Alexander Christie, the pursuer, was barred by Samuel Straiton's compliance with the statute of bankruptcy, vouched by the Lord High Chancellor's certificate, from recovering his payment out of the effects acquired by the said Samuel Straiton after the said statute of bankruptcy."

No 96.

Pleaded in a reclaiming bill; It is a certain principle, that no law can have any effect beyond the territory of the Legislature, *Voet de statut. tom. 1. num. 5*; And hence it follows, that an English act of Parliament cannot affect a subject belonging to a Scotsman residing in Scotland, so as to dispose of it to his prejudice. Nor does it make any difference, that we are now subject to the same Legislature, since our civil laws remain distinct, and the jurisdiction of the courts of the several nations separate, and no statute made to regulate the judicial procedure in the one, has any force in the other nation.

It is plain the debt in question is a Scots subject; for, all *nomina* are considered as situated in the country where the creditor has his residence, without regard to the *locus contractus*, or *locus solutioni destinatus*, *Voet. tit. de rer. div. § ult.* Dirleton and Stewart, word, *Nomina Debitorum*, and word *Strangers*.

Judges of any country have the less reason to shew regard in their determination to the statutes of another, when these are made with any particular view relating to the polity of the place where they are enacted, as for the encouragement of people to settle and trade there; and no comity will be extended so far as to regard constitutions not founded in the law of nations: Neither does it appear by the English statutes it was in the Legislature's view to bind any more than their own subjects. The first statute, 13th Eliz. c. 10. regards only 'a subject or denizen,' whose failing comes to defraud his creditors, 'being subjects born;' and the act 1st Ja. I. c. 15. which ratifies and adds to this act, as in favour of 'subjects born.'

As after the surrender, all conveyances of the debtor's effects are null, it would be very inconvenient that any such law as is here contended for should be generally received; for then no person could contract with another on the faith of his having effects in the country, since he could neither affect them by diligence, nor receive voluntary payment out of them, as they might be antecedently tied down by some such procedure, perhaps fraudulent, in another country: And therefore, to establish this doctrine, would require strong instances of its being received in the practice of nations.

The *locus contractus* was plainly Scotland, both with regard to the bills which were accepted there, and the goods commissioned, which were there furnished, as was found, the Assignees of Thomas Faulks against Aikenhead, No 61. p. 4507., where, in a question concerning the prescription of an accout of drugs sent from London, that was found to be the *locus contractus*; and that therefore the law of England ought to be the rule; and a bill drawn in Virginia upon Scotland, was found a Scots debt, Rogers against Cathcart and Ker, No 60. p. 4507.

Answered, It is true that statutes are of no force *extra territorium*; but to understand this rule, it is necessary to distinguish them according to the different matters which they concern, whence they are divided into real and personal. A law in one country cannot affect subjects locally situated in another: But if a person has a character fixed upon him by the laws of his country, he

must carry it with him every where, as of minority, prodigality, and in like manner of one discharged of his debts by law; and this not from the obligatory force of any statute, but the necessity of the thing, and the perplexity that would arise, if a person by every change of his place, were to change his quality. This matter is treated of by *Rodenburgius de jure quod oritur ex statutorum diversitate*: And in T. 2. C. 5. § 15. & 16., he treats the case of a bankrupt debtor at Utrecht, whose effects in Holland were exposed to sale by the curator appointed in Utrecht; and this being opposed by his creditors, the Judges in Holland determined in favours of the curator, for this reason, ‘*Quod apud nos (viz. in Utrecht) super universis debitoris facultatibus, adeoque et pretio ex venditione illa redigendo, ab uno eodemque judice peragenda decidendaque sit creditorum contentio.*’ Gaill, in his *Practical Observations*, treating the case of a bankrupt, says, ‘*Judicem domicilii debitoris adeundum esse, ad hoc, ut cognoscat et pronunciet super facienda immissione vel venditione quorumcunque bonorum, ubicunque locorum existentium. At executione non potest fieri per eundem judicem; sed judex territorii adiri et pro facienda executione requiri debet.*’ And he compares this case to that of a tutor, who being named in one place, administers the pupil’s effects wherever situated.

When these things are attended to, the explication of this matter will not be very difficult: Those who contract with an English merchant, know that his effects are subject to the laws of that country concerning bankruptcy; indeed when the Commissioners are chosen, they must recover his foreign effects, by prosecuting in the courts of the country where they are situated; but the further consequences, regarding the extinction of the debt, must be regulated by the law of England, the determination whereof ought to have an universal effect, and that not from the force of the statute, but that regard which different nations pay one to another.

It is a most favourable plea, and highly the interest of traders, that an unhappy man, who has fairly given up all his effects, should not be incapacitated from business; and the laws of England in this respect are not calculated for particular views, but agreeable to the law of nations, all of which have, in different degrees, introduced some benefit in favour of honest bankrupts: And the authorities above quoted, point out, that what is determined in one country, ought to be held valid in another. Neither is the English statute of bankruptcy restrained in its effect to denizens, but extended to all persons, by 21st Ja. I. c. 19. § 15.

The parties had carried on a joint trade, and it was in England that the receipt of the goods completed the obligation, and there the balance behoved to be sued for; so that ought to be looked upon as the *locus contractus*, if it were material in the question.

THE LORDS adhered.

Reporter, *Elchies.*

Act. *Ferguson.*

Alt. *Wedderburn.*

Clerk, *Kirkpatrick.*

D. Falconer, v. I. No 141. p. 177.