

No 66.

cannot plead from equipollents, that though he was not beyond sea, but in Scotland, the being without the jurisdiction of England entitled him to the benefit of the proviso. Further, it is obvious, that beyond seas, and without the jurisdiction of England, are manifestly different; but, supposing for once there might be a *par ratio* for supporting this addition to the statute, yet it is possible, that, after the union of the Crowns, when this statute was made, the legislature did not think it necessary to make absence in another part of the island sufficient cause to stop the prescription; when absence in common cases of prescription was no sufficient plea to defend against it. If it had been intended to take in all who were without England, dominion of Wales, and Berwick upon Tweed, these words, very familiar in acts of Parliament, would have been used, and not have had recourse to the words 'beyond seas,' improper to express such intention. See Rae against Wright, No 59. p. 4506.; Assignees of Fulks against Aikenhead, No 61. p. 4507.; Elliot *contra* Duke of Hamilton*.

THE LORDS ordained both parties to adduce what authorities they could upon the construction of the statute of limitation by the courts in England, with respect to the several clauses whereof the meaning is controverted.

N. B. It is informed, this cause was allowed to sleep since that time.

C. Home, No 215. p. 356.

1755. July 7. TRUSTEES OF THOMAS RENTON *against* ROBERT BAILLIE.

No 67.

The statute of limitations was not found to run in favour of a person who had removed to Scotland immediately after granting the note pursued on, and continued there.

SIR THOMAS RENTON, a Scotsman, went to reside at London in the end of his life; and having large sums lying at interest in Scotland, he granted a factory to James Baillie writer to the signet to uplift his interests for him.

Baillie was occasionally at London in the year 1733, when he made up, along with Sir Thomas, an account of his intromissions, and of the payments he had made; at the foot of which account there was a docquet signed by them both, in which Baillie acknowledged himself debtor in the sum of L. 108 : 16 : 10 Sterling; and, of the same date, he granted a promissory note, payable in London a short time after to Sir Thomas for the said sum, bearing to be for the balance of accounts fitted betwixt them of that date.

Immediately after, Baillie returned to Scotland, and was never in England again, nor had he any further clearance of accounts with Sir Thomas.

In the year 1751, the Trustees of Thomas Renton, son and heir of Sir Thomas, pursued Robert Baillie, son and heir of James Baillie, for payment of the above promissory note.

Pleaded for Robert Baillie; As both the *locus contractus* and the *locus solutionis* was in London, the note falls to be regulated by the law of England; in which light, the six years prescription, contained in the English statute of limitations of the 21st James I. cap. 16. is a bar to the action.

* See General List of Names.

Pleaded for the Trustees; *imo*, As the note in question was granted for annualrents of sums uplifted by James Baillie, as factor for Sir Thomas Renton in Scotland, it was a Scots debt, and therefore ought to be regulated by the law of Scotland.

2do, If it fell to be regulated by the law of England, then, as James Baillie went out of England into Scotland immediately after granting the note, he falls under the exception contained in the act of the 4th of Queen Anne, cap. 16. § 19. importing, that the prescription shall not run in favour of a defender during the time he is beyond seas.

Answered for Robert Baillie; The exception in the act of the 4th of Queen Anne, relates to defenders gone beyond seas, but not to defenders gone into Scotland.

Replied for the Trustees; The exception contained in the act of the 4th of Queen Anne being an equitable provision, ought to have an equitable interpretation; in which view, it would fall to be extended equally to those retired into Scotland as to those gone abroad; for the only reason why prescription is refused to a defender beyond seas, is, that the creditor has not an opportunity of suing him in England; but neither has he such opportunity when the defender retires into Scotland.

Such extension will be agreeable to the analogy of interpretation on the exception contained in this statute.

Jersey and Guernsey, in the letter of the exception, are beyond seas; but, in the interpretation of it, they are not. Prescription is still allowed in the law of England to run in favours of a debtor retired into either of these islands, though both are beyond seas; it is then the spirit, and not the letter of the statute, that is to be attended to.

‘THE LORDS found action lay on the note.’

Act. *J. Dalrymple.*

Alt. *Hamilton-Gordon.*

Clerk, *Forbes.*

J. D.

Fol. Dic. v. 3. p. 220. Fac. Col. No 156. p. 234.

1761. *March 2.* GRIZEL MACNEIL *against* RODGER MACNEIL of Taynish.

ON the 7th October 1720, Hector Macneil, residing in Ballyfillip in Ireland, drew a bill upon Hector Macneil of Taynish, then in Ireland, which was duly accepted. Both drawer and acceptor were natives of Scotland. The bill was in the following words: ‘Ballyfillip, 7th October 1720, Sir, against the first day of February next to come, pay to me or my order, at the dwelling-house of Mr Neil Macneil at Belfast, the sum of L. 100 Sterling money, value received by you from me. Pray, make thankful payment, and oblige,’ &c.

In the year 1750, Grizel Macneil, indorsee to this bill, brought an action against Roger Macneil, the representative of Hector Macneil of Taynish, acceptor of the bill.

No 68.

Irish statute of limitations not a defence against an action in Scotland, when the defender has not resided six years in Ireland after contracting the debt.