

PRESIDENT. The distribution of the revenue belongs to the Court of Exchequer: what can more relate to the revenue than the arbitrary division of seizures, according to the regulations of the Court of Exchequer.

ALEMORE. The seizure goes to the informer: if the division of it has been taken under the cognizance of Exchequer, this Court ought not to interfere; but, if the Exchequer has left the division to be adjusted by the parties, the jurisdiction of the Exchequer will not be exclusive.

JUSTICE-CLERK. I recollect that disputes of this kind have been often determined in the Treasury Chamber of Exchequer. I was moved by the party having brought this trifling affair before the Sheriff without any objection on the part of the defender; but this is no good *ratio decidendi*. I would keep the line of jurisdiction separate.

PITFOUR. The declaring of seizures belongs to the Exchequer. Shall we snatch at the opportunity (*an rapienda est occasio*,) to take upon us an inferior part of jurisdiction, that of dividing the seizures when declared.

COALSTON. This a suit, and an account concerning forfeitures. There is a remedy in Exchequer, and that remedy is daily used. This court ought to take no cognizance of it.

The Lords found the action not competent, and altered Lord Ellicock's interlocutor. They also found no expenses due.

Act. G. Buchan Hepburn. Alt. G. Wallace.

1767. July 17. GEORGE GILLENDERS *against* JOHN BIRTWHISTLE.

PROMISSORY-NOTE.

Recourse was sustained against the indorser of a Promissory-Note, though the strictness of negotiation on bills was not observed.

[*Faculty Collection, IV. 292; Dictionary, 12,258.*]

AUCHINLECK. A promissory-note does not admit of proper diligence. Here demands for payment were made.

COALSTON. In England, promissory-notes are the same as bills. This man was an Englishman, and supposed the promissory-notes in question to be the same as bills. The provision of recourse strengthens the supposition—but I do not think that the same strict negotiation is necessary in promissory-notes as in bills. The equitable powers of the Court might be interposed were there supine negligence in this case. I cannot but lament that the English law, as to promissory-notes, does not extend to Scotland.

JUSTICE-CLERK. Promissory notes are not entitled to the privileges of the statute, but they are entitled to some privileges—they must be negotiated. I felt a disposition for the cause of the stranger, but there is not any *mora* in this case sufficient to relieve him. Promissory-notes are not yet in the same state in Scotland as they are in England.

HAILES. Of the same opinion—but thinks no expenses due—Mr Dingwall, from want of memory, committed many mistakes in his averments before the Ordinary, and thereby threw a sort of obscurity over the cause.

Adhere to Lord Kennet's interlocutor, but found no expenses due.
Act. A. Lockhart. *Alt.* R. M'Queen.

1767. July 22. JOHN LAYCOCK *against* THOMAS CLARK.

FOREIGN.

Execution ordered for costs awarded by a foreign decree in terms of a foreign statute.

[*Faculty Collection*, IV. 113; *Dictionary*, 4554.]

HAILES. The opinions of some of the foreign lawyers, quoted in the answers, carry the *comitas* to an extravagant length—but the defender seems to abridge the *comitas* too much. A foreign decree will be held just unless its injustice be shown. The defender is for introducing a sort of *anti-comitas*, and holds that the foreign decree must be held unjust until proof be brought of its justice; and what proof can the pursuer bring? Certainly none but the evidences who were examined at the trial in England. Now the defender, who requires this, has also asserted that the English witnesses cannot be compelled to appear, and that the Scotch witness, M'Bean, is not to be believed—so that his argument not only requires that the pursuer should instruct the justice of the decree, but also tends to show that he has not the means for instructing its justice. Further, the English court was a court chosen by the defender himself—and he must stand to its sentence. Had Laycock been cast, Clark would have received damages. When Clark is cast, it is reasonable that Laycock should receive expenses;—otherwise there would be an inequality and a hardship.

MONBODDO. Clark was the provoker, and chose the *forum*. A contract entered into in a foreign country is effectual in this country. Here, by Clark being the pursuer, there is a tacit contract. The note subjoined to the decision by President Dalrymple is good law.

PITFOUR. If a man is pursued in a foreign country, and a decree is obtained, the question is, how far will this avail in another country? The general solution is, that execution will go upon evidence of the justice of the cause. This is the case of a defender acquitted; and *exceptio rei judicatae* is certainly binding. But the difficulty is as to the expenses given,—how far are they actionable in another country? I think there is no reasonable ground to doubt that they are. Clark chose the court. Can he object to its sentence? He brought his action before an English court—he knew that it was to be determined by the verdict of a jury, and he knew that that verdict was a sort of blind judgment—because there is no record of the proceedings in such cases. The au-