

No 34.

by the said Robert Grant cannot be supported by parole-evidence; and therefore that the proof founded upon by him in support of his said claim, is neither competent nor relevant, and refuse to sustain the same.'

Reporter, *Lord Stonefield.* For the Creditors, *Murray.* Act. *Buchan-Hepburn.*
Clerk, *Mitchelson.*

Fac. Col. No 94. p. 170.

1790. December 10.

No 35.

ARCHIBALD GOVAN and his ATTORNEY *against* SPENCER BOYD.

JAMES BOYD of Pinkell, by a deed executed in North America, obliged himself to convey the lands of Pinkell in Scotland to Carter Bruxton for a price agreed on. An action was brought in the Court of Session against Spencer Boyd the heir of James, to implement that deed.

THE LORD ORDINARY found, that the personal obligation to convey the lands, was obligatory upon the party and his heir; and must be actionable in Scotland.

Effect was afterwards, by the Court, refused to the deed, because it had been procured by fraud, but the principle was acknowledged, that an obligation to convey land, executed in a foreign country, agreeable to the laws of that country, ought to afford action here to force implement of the obligation.

Lord Ordinary, *Ankerville.* Act. *W. Millar.* Agent, *J. Marshall.*
Alt. *Robert Blair.* Agent, *A. Blane.* Clerk, *Home.*

1792. January 21. ROBERT ARMOUR *against* JOHN CAMPBELL.

No 36.

A bill being drawn in a foreign state on a person in Scotland, though not accepted, creates a debt, which is held not to be a foreign, but a Scotch one.

CAMPBELL, a Scotsman, who was settled as a merchant at New York, became indebted to Armour in the course of trade. Towards payment of a part of the debt, Campbell drew a bill on his father at Greenock, payable to Armour, which, however, was not accepted.

Soon afterwards Campbell became bankrupt, and, by the law of that state, obtained a statutory discharge, similar to that resulting from the certificate of conformity in England.

On his returning to Scotland, personal diligence was raised against him upon the bill, which he brought under suspension, on the ground of the claim being extinguished by the act of the *lex loci* above mentioned. This plea gave occasion to the same sort of discussion as occurred in the case of *Watson contra Renton*, Diy. 9. Sec. 5. b. t.

But on the part of the charger it was *separatim*

Pleaded ; The sum due by this bill must be considered as a Scotch debt ; because, though drawn at New York, the bill was made payable in Scotland. The rule of law is thus laid down by Julianus: ‘ *Contraxisse unusquisque in eo loco intelligitur, in quo ut solveret se obligavit;*’ l. 21. ff. De oblig. et act. Vid. etiam l. 1. 2. et 3. De reb. auct. jud. poss. Voet ad tit. De Judic. § 73.

With respect more particularly to bills of exchange, the interests of the parties are ever to be regulated, not by the law of the country where they are drawn, but by that of the place in which they are negociated. Voet, ad tit. De naut. fæn. § 10.; Rodgers, No 103. p. 1518.; Brown, No 154. p. 1587.; 14th November 1764, Stevenson, Div. 7. *b. t.* ; Strange’s Rep. v. 2. 733, Burrough v. Jemino.

Answered ; If the drawee had had funds of the drawer’s in his hands, or had he accepted the bill, then a debt must have arisen against him, which no doubt would have been a Scotch one. But the case being the reverse, there is here only a claim of recourse against the drawer at New York ; and this is as plainly a foreign debt as any one can be.

Nor do the authorities quoted tend to contradict this observation. In the cases of Brown and of Stevenson, it was only found, that the drawer was liable in recourse for exchange according to the rate of the place of payment, and that the forms of negotiation in practice there should be followed out ; points which do not at all affect the present question. And the passage of Voet last cited is exactly of the same tendency.

In the case of Rodgers, the English statute of limitation was found not to cut off a debt due in Scotland ; and, on the same principle, the debt in question ought to be exclusively regulated by the law of New York.

That quoted from Strange’s Reports shews, in like manner, how debts are regulated by local laws, but has no tendency to prove, that the *locus* of the present debt is Scotland, and not New York.

THE LORD ORDINARY ‘ sustained the reasons of suspension.’ But the case coming under review by a reclaiming petition and answers, the Court ordered it to be heard at the same time with that of Watson and Renton ; after which

THE LORDS altered the Lord Ordinary’s interlocutor, and ‘ found, that in the circumstances of the case, the statutory discharge obtained in the State of New York cannot bar the charger from recovering payment of the sums due to him in this country by the ordinary diligence of the law of Scotland.’

Lord Ordinary, *Justice-Clerk.* Act. *Craigie.* Alt. *Macleod Bannatine.* Clerk, *Menzies.*
S. *Fac. Col. No 198. p. 417.*