that head; and it was urged, that the defence had always been repelled, when founded upon a suit in a foreign country. No 5.

"THE LORDS repelled the defence, and found the action competent."

Act. *Alex. Gordon.* Alt. *W. Wallace*:

G. F. *Fol. Dic. v.* 3. *p.* 387. *Fac. Col. No* 93. *p.* 346.

1799. *June* 25. EDWARD MAY and ATTORNEY *against* JOHN WHARTON.

No 6.
An Englishman having come to Scotland, after filing a bill in Chancery against a bond granted by him in England, it was found nevertheless to be competent for the creditor to constitute the debt in the Court of Session.

JOHN WHARTON, in 1794, granted to Edward May a bond in the English form for L. 12,000, defeasible on payment of L. 6000, with interest at five per cent.

Both parties were natives of, and resident in England.

In 1795, Mr Wharton filed a bill in Chancery, craving that the bond should be reduced or restricted, in terms of an accounting to be there instituted; and it appeared, that it formed part of a complicated set of money transactions between the parties.

Mr Wharton afterwards came to reside in Scotland, with a view, as was alleged, to the privilege of the sanctuary of Holyroodhouse; and in 1797, Mr May and his attorney raised an action against him on the bond in the Court of Session.

At that time no judgment had been pronounced in Chancery, and it was admitted, that an injunction there, applied for by Mr Wharton, against execution at common law, had not been obtained.

He, however, contended, that the dependence of the Chancery suit was a bar to procedure in the Court of Session, in the circumstances of the present case, where the parties were English, and the decision must depend entirely on English law and English forms, which can be but imperfectly understood in this country; that to proceed in this action would needlessly double litigation, and occasion the risk of contradictory judgments in the two Courts; and that as the bond did not give direct execution at common law in this country as in England, but afforded merely a ground of action, it was competent for this Court to take into view every equitable consideration as to the mode of procedure on it.

Answered; The dependence of a Chancery suit is in no case a bar to procedure in this Court, (See No 2. and No 4. *supra.*) where, even an injunction from Chancery would have been unavailing; and still less in the present, where the defender has failed to obtain one, and it is admitted, that execution would have been competent against him, had he remained in his own country.

THE LORD ORDINARY ordered memorials on this preliminary defence.

No 6. THE COURT, (30th June 1798), upon the grounds stated for the pursuer, "repelled the defence of *lis alibi pendens*, and remitted to the Lord Ordinary to proceed accordingly."

And, upon advising a petition, additional petition, answers and replies, "adhered."

Lord Ordinary, *Glenlee.* Act. *Anstruther.* Alt. *Jo. Clerk.*
Clerk, *Pringle.*

D. D. *Fac. Col.* No 133. *p.* 304.

Lis pendens within the same jurisdiction, See PROCESS.

See APPENDIX.