

1740.

ROBERTSON
v.
MARQUIS OF
ANNANDALE.

THOMAS ROBERTSON, - - - *Appellant* ;
 GEORGE MARQUIS of Annandale,
 the EARL and COUNTESS of } *Respondents.*
 Hopetoun, - - - }

10th *December*, 1749.

PRESCRIPTION.—ACT 1579, c. 83.—Circumstances under which a claim for servants' wages was found to be prescribed.

Found that that term of prescription is to be applied which is recognised by the law of the debtor's domicile, in opposition to that of the *locus contractus*.

THOMAS Robertson, (the appellant,) while in Eng- No. 58. land, entered into the service of James Marquis of Annandale (then Lord Johnston) in August 1717, as his Lordship was going upon his travels; and remained with him abroad until the year 1721. He then went down to Scotland with the Marquis, and remained with him till the year 1726, when he left his service, and went abroad.

It does not appear that there had been any agreement between the parties, as to the wages, or salary to be paid to the appellant; or that there had been any settlement of their mutual accounts. As to the capacity in which the appellant had been employed, he maintained that it was as a private secretary; and the respondents admitted that, although a domestic servant, he had kept his Lordship's accounts and received and laid out his money.

By a writing executed on the 14th November 1724, the Marquis desired, that at the first term

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after his death, half a year's wages more than what was due to them, should be paid to all his servants, and to the said Thomas Robertson 50 guineas, over and above. At the time that the appellant left his service, the Marquis also gave him a promissory note for 2000 merks.

The Marquis died in 1730, whereupon the appellant brought an action against the respondents, his executors, for payment, 1st, Of L.1780 as his salary, at the rate of L.200 a year. 2dly, Of the half-year's wages provided for by the writing of the 14th November 1724. 3dly, Of the 50 guineas contained in the same writing. And, 4thly, of the sum contained in the promissory note.

Marquis George as heir of entail, appeared, and was made a party to the action.

The Commissaries found, (9th November 1739,) " That the first claim for wages was prescribed by " the 6th of James VI. cap. 83. That the dona- " tion of a half-year's wages more than was due, " contained in the writing of 1724, could only " respect those servants who were in the service " of the Marquis at the time of his death ; and as " the pursuer had left his service some time be- " fore this event, he had no right to it. But they " sustained the legacy of 50 guineas, and also the " claim for the 2000 merks contained in the pro- " missory note."

Robertson presented a bill of advocation, upon advising which with answers, the Lord Ordinary refused the bill, (19th December 1739,) and the Court adhered (3d January 1740.)

Entered

Jan. 25, 1740.

The appeal was brought from those parts of the interlocutor of the Commissaries, which found,

that the claim for wages was prescribed, and that the appellant had no right to the half-year's wages ; and also from the above interlocutors of the 19th December 1739, and 3d January 1740.

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Pleaded for the Appellant :—The services being admitted, and payment not being alleged, it is reasonable (although the appellant cannot prove any particular agreement) that he should receive such remuneration as is usually given to persons acting in the situation in which he was placed. A settlement between the Marquis and appellant, during the life of the former, was prevented by various circumstances.

2. The act establishing the triennial prescription, cannot properly affect this case, being only intended for the meaner sort of servants, upon a presumption that they would not, and could not, subsist so long without their wages : but though this case were comprehended in the act, its operation is avoided by the writing in 1724 acknowledging that wages were then due.

3. The agreement between the late Marquis and the appellant was entered into in London, and must be governed by the laws of England, by which, actions of this nature are not barred within less than six years, whereas the present action was raised within four years after the service was ended.

Pleaded for the Respondents :—The act of Parliament makes no distinction between servants of a higher or lower denomination ; but enacts, “ that actions of debt, servant's fees, &c. not “ founded on written obligations, be pursued with- “ in three years, otherwise the creditors shall have

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“no action, except he prove by writ or by oath of
“party.”

The writing in 1724 does not even imply that there were any wages due in 1726, nearly two years after the time when the appellant quitted the Marquis' service. The presumption is, and must be, that all the wages due to the appellant were paid, as he made no demand till after the Marquis' death.

Judgment,
10th Decem-
ber 1730.

After hearing counsel, “it is ordered and ad-
“judged, &c. that the interlocutors complained of
“be affirmed.”

For Appellant, *William Noel, William Ha-*
milton.

For Respondents, *W. Murray.*