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dent's right of indemnity against the surety of the principal debtor.

After hearing counsel, it was

Declared that the appellants not having pursued the appeal against the interlocutors of 18th July 1780 on the 19th June 1782, the day appointed for hearing the said appeal, and the said interlocutor having been thereupon affirmed, and thereby become absolute and final, the appellants are precluded from the ground of objection now insisted on by them. And it is therefore ordered and adjudged that the interlocutors be affirmed.

For Appellants, *A. Pigott, Alex. Wight.*

For Respondent, *Ilay Campbell, Wm. Alexander.*

[Mor. 4525.]

REBECCA DELVALLE, FRANCIS ROPER HEAD, Esq. and Others, Creditors of the Governor and Company for Raising the Thames Water in York Buildings, - } *Appellants;*

THE GOVERNOR & COMPANY of Undertakers for Raising the Thames Water in York Buildings, - - - } *Respondents.*

House of Lords, 12th March 1788.

PRESCRIPTION—FOREIGN.—Circumstances in which held, that certain bonds due to creditors in England, by an English Company, ranked on an estate in Scotland belonging to *that Company*, had incurred the negative prescription of forty years. Reversed in House of Lords.

The appellants, creditors of the York Buildings Company, were those class of creditors called the annuity creditors, the company having been empowered by act of Parliament to raise money on their estates by granting bonds of annuity.

The following is a copy of one of the bonds:—

"13. No. 77. £100.

"The Governor and Company of Undertakers for raising "the Thames Water in York Buildings do hereby oblige "themselves and their successors to pay unto Mr. Thomas "Yorburry, his executors, administrators, or assigns, £100, "with interest at the rate of £4 per cent. per an., on the "12 day of April 1732; for true payment whereof they

" bind themselves and their successors in the penal sum of " £200. London, 12 Dec. 1724.

" By order of the Court of Assistants,

(Signed) HUMPHREY BISHOP, Cashier."

In the long course of procedure and litigation which attended the winding up of the company, the bond in question had incurred the negative prescription; and the company finding that there would be a surplus left to divide among the partners of the company after satisfying all just claims, objected to the appellants' bonds. 1. That they were cut off by the negative prescription of the law of England, no step having been taken by the creditors on such bonds within twenty years. 2. That such of the creditors as had used no steps of diligence against the company or their estates in Scotland, for the space of forty years, were now excluded by the negative prescription of the law of Scotland. 3. That the creditors holding these bonds, which were conceived in the English form, could not attach the property of their debtors for more than the penal sum, whatever amount of interest might be due on them.

It was answered, that by various proceedings had in regard to the company before its bankruptcy, these bonds had been recognised as subsisting debts, and that this had been done long within the twenty years prescription of the law of England, assuming the *lex contractus* and the law of the domicile of the company to prevail.

Upon the report of Lord Monboddo, the Lords found as follows:—" Repel the objections stated to the bonds claim- Feb. 5, 1783.
" ed in the ranking, arising from the taciturnity of twenty
" years, in respect, from the special circumstances of the
" case, there is no room for the presumption of the said
" bonds having been paid by the said company: sustain the
" second objection, to such of the said bonds as have lain
" over for forty years without any diligence done, or action
" raised thereon: that the same are not entitled to a place
" in this ranking, in respect that they are cut off by the ne-
" gative prescription of the law of Scotland," &c. On reclaiming petition against the finding as to the negative prescription of the law of Scotland the Court adhered. The Court afterwards pronounced two interlocutors on points of form, of these dates. July 31, 1783. Mar. 11, 1786.

Against these interlocutors the creditors brought the present appeal. Mar. 8, 1787.

Pleaded for the Appellants.—1. The books of the York Buildings Company, and the proceedings in the House of

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Commons and in the Court of Chancery, afford the most complete conviction that the bonds on which the appellants claim to be ranked are still due and owing, and that payment of no part has been received. 2. The objection, besides, will appear most unfavourable, when it is considered that, till the sale of the remainder of the company's estates was made, under the authority of the act 17 of His Majesty, the appellants, who, or their predecessors, had, through absence, minority, or other such causes, neglected to enter their claims, had no prospect of receiving payment of their debts. Till then, it was generally supposed that the company's estates in Scotland would be exhausted by the claims of *real* creditors. In England the company was possessed of no estate whatever, and insuperable bars lay in the way of bringing a suit, so as to obtain judgment against them. 3. Although the negative prescription of the law of Scotland may, with great propriety, be resorted to to cut down bonds or contracts entered into in Scotland, it cannot in justice be applied to the bonds now in question. The proper *forum* of the York Buildings Company was and is in England, the residence of the company, and the seat of their trade being there. They were created into a corporation, first by an *English* patent, and afterwards by an *English* statute; their general court was always held in London, and no where else. The great bulk of the partners were Englishmen, and the proceedings in the winding up show that their affairs have been in the Court of Chancery, subject to the orders of that court. In short, to all intents and purposes, they are an English company. The bonds in question were issued by the company in the English form; they bear date in London. They are not conceived in a form which could have been sustained by the common law of Scotland, had they been issued there. The appellants also are Englishmen, and have their residence in England. And although, in order to recover payment of their just debts out of their debtor's estate in Scotland, it behoves them to resort to the courts of law in Scotland, the municipal laws of that country cannot be set up as a bar to their suing upon obligations which are still *good grounds of debt in England.* There is no statute of limitation in *England* similar to the negative prescription in Scotland in the case of bonds; and in regard to the twenty years prescription, it is clear that it does not apply to the case—no presumption of payment being possible in the circumstances of the procedure had in this case, where these bonds were acknowledged as still due.

And it is no answer to say, that although the appellants' bonds may still be good in England, yet the judges in Scotland ought not to sustain action upon them in opposition to their own law, which holds the debt extinguished in forty years, because it would be wrong to apply the statutes relative to the negative prescription in Scotland to foreign transactions or contracts, executed in a foreign country, and where both debtor and creditor have their domicile. These statutes can have no authority *extra territorium.*

Counsel having been called to be heard in this cause; and no counsel appearing for the respondents, the appellants' counsel were heard to state and argue the case (as above), and being withdrawn, it was

Ordered that the interlocutors complained of be reversed, in so far as they sustain the objections to the bonds claimed by the appellants, that the same are not entitled to a place in the ranking, in respect they are cut off by the negative prescription of the law of Scotland.

N. B.—*No Respondents' case delivered.*

For Appellants, *Ilay Campbell, John Scott, Alex. Wight.*

MISS JANE WHITEFOORD, only surviving Child of the deceased Bryce Whitefoord, } *Appellant;*

JAMES WHITEFOORD, Esq. - - *Respondent.*

House of Lords, 15th March 1788.

SUCCESSION—FIAR—INFEFTMENT—DISPENSATION CLAUSE—PRESCRIPTION.—A father conveyed his estates to his heir male, whom failing to his eldest daughter. The heir male, after the death of the father, succeeded, but died without issue; having, previous to his death, conveyed the estates to a remote relation of the same name: Held, that as fiar, he was entitled so to convey the estates, notwithstanding the destination over in favour of the daughter. Objection to sasine, that the dispensation clause, granted by the Crown, making infeftment on one part of the lands good for the whole was inept, these lands being held of different superiors. Objection repelled, prescription having run upon the title. Affirmed in the House of Lords, without prejudice to any challenge appearing on the face of the sasine of the lands of Kirkbryde; said reservation being of consent of parties.

Bryce Whitefoord, then in possession of the lands of Dunduff, Cloncaird, and others holding of the prince; and the lands of Kirkland of Maybole, called Kirkbryde, holden of the crown, obtained a charter erecting the whole into a ba-