

\*N. 1. When one hath chosen to bring his Action before a Court, he is understood to have given up his privilege of pursuing the same in any other place, where the sentence of the former Court will be res judicata and put to ready execution. For the effect of such a new suit could only be to distract and annoy the Defendant by carrying him from one Court to another, and obliging him to have his Evidence whether witnesses or writs necessary for his defence in different places, without doing the pursuer any possible service, since a desert is as effectual where it repeats as many. But one may notwithstanding his Action, already commenced, bring it over again before another Court in a place where a sentence upon the first process would have no ready effect. And where the exception of Res Judicata doth not lie, neither is that of Lis Alibi pendens competent. So one <sup>who had</sup> sued an English Company before the Chancery of England for great sums owing to the Plaintiff by the Defendants, having brought an Action against the Company before the Court of Session, for recovering his money off a considerable estate ~~in~~ in Scotland belonging to him. The defence of Lis Alibi pendens brought in the Court of Chancery in England, was rejected. — 2 January 1728 Sir John Mordaunt contra the Company of Undertakers for raising the Thames-water in York Buildings. Because however the Court of Session may out of civility or civility give countenance and Intercourse to the Authority, to English Decrees to make them effectual in this Country upon a presumption that they are just & Right: yet when it is not the English Decree that is put to execution, but the sentence of our own Judges upon it. A creditor is intitled to recover payment out of his Debtors Effects where ever they can be found, a Decree of the Chancery could not charge the Real Estate of the Company in Scotland, a Decree of the Court of Session was necessary for that End; And both Actions may be regularly carried on at the same time, so that no good Reason can be assigned for delaying incident process here, till the Decree of that before the Chancery, being whatever judgement be given in Chancery, a Decree in this Country will be necessary. And the hardship of bringing the Evidence before both Courts may be eased by commissions, Receipts & Examinations.

\*N. 1. But yet our Law is not quite so lame as that Learned Author imagined. For as a check to such an indirect practice, there lies a personal Action for Reparation to the Plaintiff in a Tailzie against a former Heir and his Representatives what so ever to purge the Tailzie of his Debts and Goods charged upon it contrary to the prohibition of Statute 2 February 1728 Lord Strathnavor contra Duke of Douglas.