

rest the rejection of it upon this peculiar act of limitation, by which it was in the clearest terms designated, and finally excluded as a claim against the state on account of property confiscated, which had not been brought in and passed by the Auditor-General, on or before the first day of September, 1787. (*d*) But, as it is fit that the whole ground upon which the state rests its defence against this claim, should be fully laid open, I shall proceed.

It is clear then, that this creditor lost nothing by the operation of the confiscation acts; they placed none of the funds of his debtors beyond his reach; nor did they leave him without the most effectual remedies by which he might have made those funds available. And consequently, nothing can be found in those acts, that will afford the slightest protection to his claim against the full force of the presumption of satisfaction, arising from the great lapse of time since it became due. But suppose no such confiscation acts had been passed, then the *Mollisons* must be considered, prior to the 4th of July, 1776, as British merchants resident beyond the jurisdiction of this state; after that time, until the peace of 1783, as alien enemies; (*e*) and thenceforward as alien friends resident abroad; who during all that time had property within the jurisdiction of this state. Then it may be asked, would *Hepburn* have been without remedy, or would any of his legal remedies for the recovery of his debt have been impaired or destroyed by the intervening war or other circumstances?

The case of a debtor resident abroad, who has property remaining in the country of his creditor, is a common one, which must frequently occur every where; and a code of laws, that gave no adequate remedy to the creditor, in such case, would be mainly defective. The name of the process, or the form of the proceeding, is of no importance, so that relief can be obtained by it. In the English books the London foreign attachment is said to be a mode whereby the goods and debts of a foreigner in some liberty may be taken to satisfy his creditors within such liberty. (*f*) And outlawry in civil actions is considered as in nature of civil process to compel an appearance to the suit; or after judgment to procure satisfaction. The forfeiture, though nominally to the king, in truth goes to the plaintiff towards payment of his demand. If the outlaw appears, pays all the costs, puts in sufficient bail, and does

---

(*d*) 1786, ch. 18.—(*e*) *Barclay v. Russell*, 3 Ves. 433.—(*f*) *Jacobs' Law Dict. v. Foreign Attachment.*