

No 27.

party is deprehended within the territories of that Judge, and is not kept by the laws of this kingdom, where there is a sovereign and superior supreme judicatory, where such actions may be pleaded, and where all parties, within whatsoever subaltern judgment in the realm, may be both convened and sentenced; and, if this ground were maintained within burgh, then of the like reason outwith burghs in all sheriffdoms, one Sheriff may proceed against parties in other sheriffdoms not subject to his court, which were to confound all judgments, and greatly should prejudice parties; notwithstanding of all which, the decret was sustained, and the custom within burgh, and warrant of the Lords letters was allowed.

*Act. Morvat.**Alt. Barclay.**Fol. Dic. v. I. p. 327. Durie, p. 779.*

1639. March 23.

COL. BROG'S HEIR *against* _____.

No 28.

Found (the reverse of Blantyre against Forsyth, No 24. p. 4813.) that a Scotsman residing in Holland *animo remanendi*, may not be prosecuted here.

ONE being served and retoured heir to umquhile Colonel Brogs, who died in the Low Countries, and served there at the wars where he died, this Heir pursuing another Scotsman for delivery of the said Colonel's heirship goods, libelled to have been intromitted with by the defender in Holland, where the goods were then, the LORDS found, seeing the defunct lived and died in Holland, and that the goods were alleged to have been in Holland when the defunct died, and where they were intromitted with by the defender, as was libelled; and, that the defender was an actual residenter in Holland, where he was alleged to have intromitted with the same, and did reside there these many years of before, and ever sinsyne, and as yet he being there married, and an actual dweller there *animo remanendi*, albeit he was a Scotsman; that no process ought to be granted against him in this country for the said intromission, but that he ought to be pursued therefor in Holland, *quia actor debet sequi forum rei*; neither was it respected that the pursuer declared, that he insisted in this pursuit against the defender, being a Scotsman, that he may have execution against such of the defender's goods and estate as he had within Scotland, for satisfying of the heirship, as he should recover by this sentence, which the LORDS would not allow.

Fol. Dic. v. I. p. 327. Durie, p. 885.

No 29.

1642. February 1.

DOUGLAS *against* CUNNINGHAME.

JAMES DOUGLAS of Chester pursuing Sir David Cunninghame and George Muirhead, for payment of a sum of money, conform to an English bond, and they *alleging*, that they could not be convened in this kingdom to answer be-

fore any Scots Judge, because they dwelt presently in England, where they have dwelt these twenty-four years continually *animo remanendi*, and therefore ought only to be convened there, seeing *actor sequitur forum rei*, and that the subject is for a bargain made in England, and for English business; the LORDS repelled the allegiance, seeing the bond was made betwixt Scotsmen, and to have execution for Scots goods lying in Scotland.

No 29.

Act. ———.

Alt. *Johnston.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 327. Durie, p. 889.*1682. *February.*Mrs BROOMLEY *against* Sir ALEXANDER FRAZER'S Relict, Her Mother-in-law.

No 30.

IN an exhibition at the instance of Mrs Broomley, against the relict of Sir Alexander Frazer, of all deeds made by him wherein any clause was conceived in favours of the pursuer,

Alleged for the defender; That she not being a Scotswoman, but living in England *animo remanendi*, was not liable to answer any pursuit here, having only a personal conclusion against her.

Answered; The defender is liable to the Scots jurisdiction, in respect she has a jointure in Scotland, against which there might be execution for damage and interest, in case she did not exhibit.

THE LORDS considering this was a new case, delayed to determine it; but they inclined to assoilzie the defender.

*Harcarse, (EXHIBITION.) No 481. p. 131.*1697. *July 14.*STUART *against* SCOT.

No 31.

ARBRUCHELL reported Mr John Stuart younger of Blackhall, against Jean Scot, liferentrix of the lands of Mearns, and now spouse to Drummond of Hawthornden. It was an advocacy of a pursuit against her, before the Sheriff of Renfrew, upon the act 25th 1491, and act 15th 1535, to find caution to uphold and repair the houses on the liferented lands. The reason of advocacy was, I live not within the shire of Renfrew, *et actor sequitur forum rei*; and so you cannot convene me *extra territorium*. *Answered*, The acts of Parliament allow an edictal citation at the market-cross where the lands lie; and I, *ex superabundanti* have by a supplement cited you on my libel. *Replied*, Letters of supplement are only designed for citing of persons called for their interest, as in actions of making forthcoming, &c. but never against principal parties called as defenders. THE LORDS, considering the competency of jurisdictions, remembered the rules of law are, that *unusquisque forum sortitur vel*

A liferentrix was pursued before the Sheriff, where the liferent lands lay, to repair the houses thereon. The Lords advocated the cause, because the defender did not reside within the same county.