

No 49.
ed in Eng-
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terwards re-
nounced.

of Canterbury, and Robert French, clerk of Kirkcaldy, his executor nominated by him, being confirmed there his executor, but no inventory given up, nor contained therein; upon this testament so confirmed in England, the legatars pursuing the said executor for payment, the LORDS would not sustain process upon this testament confirmed in England, until the time the legatars should confirm a testament in Scotland; seeing the executor was here compearing, and renouncing to be executor.

Act. ———.

Alt. Sibbald.

Fol. Dic. v. i. p. 320. Durie, p. 831.

1666. July 18.

BROWN and DUFF against BIZET.

No 50.

Though the heirs of a Scotsman, dying abroad, by the *lex loci*, have right to all debts or goods belonging to him, without confirmation; yet they cannot pursue for debts due to him in Scotland, until they are confirmed, according to the forms of the law of Scotland.

BROWN and Duff having obtained decret against Bizet, for a sum due to umquhile Andrew Duff merchant in Poland, Bizet raises suspension and reduction upon this reason, that this sum having been *in bonis defuncti*, the chargers could have no right thereto, till it were established in their persons, by a confirmation in Scotland, by the commissaries of Edinburgh, *ut in communi patria*. —It was answered, Moveables *sequuntur personam*, and therefore, wheresoever the moveables be, they are regulated according to the law of the place where the defunct resides, and it is instructed by the testimony of the consul, and counsel *civitatis regiae pucensis*, that by the common law, and law of that place, moveables belong to the wife and bairns, and the pursuers were so cognosced by them, declaring the said Clares Brown wife, and the said — Duff, the only daughter of Andrew Duff; and therefore they have sufficient right without confirmation in Scotland, which appears by the act of Parliament, James I. c. 88. Par. 1426.; and it hath been still the custom so to do, and that it was so decided, Lawson *contra* Kello, No 48. p. 4497.—It was answered, That it was otherwise decided, in the case of Rob *contra* French, No 49. p. 4497. And there was no reason, that those that lived out of the country *animo remanendi*, should be in better condition than those that resided in the same, and behaved to confirm and to pay the quot.

THE LORDS found, That the testament behaved to be confirmed by the Commissaries of Edinburgh; for having considered the old act of Parliament, they found, that the point there ordered was, to what judicatures the merchants going abroad to trade should be liable, and that such as went abroad not *animo remanendi*, should be subject to the jurisdiction of that place where their testament would be confirmed, (*viz.* where they had their domicils,) but those that went out of the country to remain are excepted; but nothing expressed where their testament should be confirmed; and for the decision, the point in question was not whether a confirmation in England was valid, but whether a confirmation without an inventory was valid; and therefore, seeing nothing was

objected against the confirmation itself, the LORDS did justly find, that the wanting of an inventory, in an English confirmation, where that was the custom, did not prejudice it ; neither is the case determined by the decision betwixt Rob and French, in respect that the executor having confirmed in England, and rather being confirmed by the legatars, would not own the confirmation, but renounced the same ; and therefore the LORDS found no consuetude or decision in the case, but determined the same *ex bono et æquo*.

Fol. Dic. v. 1. p. 320. Stair, v. 1. p. 398.

No 5c.

* * * Dirleton reports the same case :

It was found *nemine contradicente*, That a stranger residing in Holland, *animo morandi* or elsewhere, though by the law of the place, his nearest of kin, without confirmation, has right to all goods or debts belonging to him ; yet if the debtor's goods be due by Scotsmen, or be in Scotland, they cannot pursue for the same, unless the right thereof be settled upon them, according to the law of Scotland, by confirmation, if they be moveables ; or by a service if they be heritable.

Clerk, Hay.

Dirleton, No 21. p. 10.

* * * This case is also reported by Newbyth :

UMQUHILE JAMES BROWN, burges of Aberdeen, being addebted to umquhile Andrew Duff, merchant in the town of —————, in the sum of 600 guilders Polish money, Andrew Duff being deceased, Christian Rankine his relict, and Christian Duff his daughter, assign the said bond to William Bisset, whereupon he pursues the Executors of umquhile James Brown to make payment.—It was *alleged* for the defender, There could be no process at the pursuer's instance, in regard there was no active title found standing in his person, nor in the person of his cedent, viz. a confirmed testament.—To which it was *answered*, There was no necessity of a confirmed testament, seeing the pursuer produced an assignation from the relict and the daughter of Andrew Duff, and likewise a testificate under the common seal, *civitatis pucensis*, recognoscing their right to the said sum, which was a sufficient title, according to the custom of that city where the defunct died.—THE LORDS found, That all goods lying in Scotland are transmissible to the heirs and executors of the owners, according to the laws of Scotland, and by no other law, and not by the law where the owner lives ; and therefore found no process, the testament not being confirmed ; and therefore found they would decide so in time coming.

Newbyth, MS. p. 79.