

There was another question agitated at the same time. viz. Whether or not the disposal of the effects considered as moveable should be regulated by the law of England, being that of the domicile. But any elaborate discussion of it was superseded by the recent case of *Hog contra Hog*, No 116. p. 4619.

No 117.

THE LORD ORDINARY pronounced judgment as follows: "Having considered the memorials, &c. and the decision therein referred to; as also the late determination of the Court, in the question between Mr Hogg of Newliston and his sister, finds, that in virtue of the trust-disposition by Thomas Durie, the persons for whose behoof that disposition was granted, had not a *pro indiviso* share in the subjects conveyed to the trustees, but only a personal claim or ground of action against them to account: Finds also, that the moveable succession of Thomas Durie must be regulated by the law of the Isle of Man, not that of Scotland."

This interlocutor being brought under review, in a petition to the Court, with answers, a considerable part of the Judges adopted the argument for Mrs Durie, though that of the opposite party prevailed in the opinion of the majority.

"THE LORDS altered the first part of the interlocutor of the Lord Ordinary, and preferred Mr Coutts to the sums *in medio* due by the heritable security; but adhered to the last part of the Lord Ordinary's interlocutor, and found, that the moveable succession of Margaret Durie and Jane Durie fell to be regulated by the law of the Isle of Man, where they had their domicile at the time of their respective deaths."

A petition reclaiming against the former part of this judgment was refused without answers. See HERITABLE AND MOVEABLE.

Lord Ordinary, *Dreghorn*.  
Alt. Solicitor-General.

For Mrs Durie, *Rolland, M. Ross*.  
Clerk, *Home*.

S.

*Fol. Dic. v. 3. p. 224. Fac. Col. No 192. p. 397.*

1794. November 27. JEAN MACDONALD against ALEXANDER LAING.

WILLIAM MACDONALD, a native of Scotland, acquired a considerable plantation in Jamaica, where he had resided about fifteen years. In 1779, he was appointed lieutenant in the 79th regiment of foot, at that time quartered in the Island; he also got the command of a fort in it. In 1783, he obtained leave of absence for a year, that he might return to Scotland for the recovery of his health. He died a few months after his arrival. The 79th regiment was by this time reduced. He had no effects in Scotland, and his only property in England were two bills which he had transmitted from Jamaica before he left it, in order, as was said, to purchase various articles for his plantation.

His father intromitted with the funds in England.

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No 118.

The succession of a Scotsman who had resided many years in the West Indies, where he had acquired a valuable plantation, but who had returned to his native country for the recovery of his health, and died

**No 118.**  
 there, found to be regulated by the law of Scotland, altho' a proof was offered that he meant to have returned to the West Indies if his health had permitted.

Jean Macdonald, and other sisters of the deceased, brought an action against him to account for their brother's executry. The defender died during the dependence of this action, leaving his grand-son, Alexander Laing, his heir, as to the succession of his son. The rights of the parties turned upon the question, Whether William Macdonald had his domicil in Jamaica or in Scotland? Laing offered to prove, that the deceased meant to have returned to Jamaica, if his health had permitted, and that he had no intention of residing in this country. And

*Pleaded*; Moveable succession is regulated by the law of the country where the deceased resided *animo remanendi*. To which country this description belongs, is to be ascertained not merely by the place of his birth, or of his death, but by the whole circumstances in his situation; *See* case of Bruce against Bruce, No 115: p. 4617. Upon this principle, William Macdonald had his domicil in Jamaica.

THE LORD ORDINARY found, the succession was to be regulated by the law of Scotland, in respect that William Macdonald died in Scotland his native country, where he had resided several months before his death.

A reclaiming petition having been presented, the Court were of opinion, that the domicil of William Macdonald was in Scotland, and that the proof offered was incompetent, and therefore unanimously "refused" the petition without answers.

A second reclaiming petition, along with which were produced two letters of the deceased, as shewing his intention to return to Jamaica upon the recovery of his health, was appointed to be answered. Upon advising which, some of the Judges came to be of opinion, that the domicil of the deceased was in Jamaica. A considerable majority, however, remained of their former sentiments.

THE COURT "adhered."

Lord Ordinary, *Dunsinnan*.  
 Clerk, *Colquhoun*.

For the Petitioner, *Jo. Burnet*.

*Alt. Tho. Wilson*.

*D. D.*

*Fol. Dic. v. 3. p. 224. Fac. Col. No 133. p. 306.*

**No 119.**  
 A marriage having been celebrated in England, then the domicil of both parties, and having been dissolved by the death of the wife in Scotland, to which their

1795. June 16.

REBECCA HOG against THOMAS HOG.

ROBERT HOG, a native of Scotland, in 1737, when settled in London as a merchant, married there an English Lady, with whom he received a fortune of above L. 3500. By marriage-articles, previously executed in the English form, it was provided, that Mr Hog should, from his wife's fortune, lay out L. 2500, or such other sum as should be necessary for the purchase of a real estate, yielding L. 100 a-year; and that the estate so purchased should be conveyed to trustees, for behoof of Mr Hog and his wife during their lives, and of the children of the marriage after the death of the survivor; the right of the children to be