

1787. November 15.

BALFOUR *against* SCOT.

PART of the moveable estate of David Scot of Scotstarvet, being situated in England and part in Scotland, Miss Scot, the heiress of his land estate, claimed a share of the moveable estate; which was opposed by her sister and others, who, as nearest of kin, laid claim to the executry, and insisted, that if Miss Scot claimed any part thereof, she was bound to collate the heritage.—*Answered*, The law of collation is unknown in England; and by the law of that country, which must regulate the effects there situated, she is, although the heiress in heritage, entitled to her share of the executry.—THE LORDS found, That the succession to Mr Scot's personal estate in England falls to be regulated by the law of England, but that she could not claim the Scots executry without collating. See SUCCESSION.

No 114.

Fol. Dic. v. 3. p. 223.

* * * This case having been appealed, it was found, That Miss Scot was entitled to her share of the whole personal estate without collating, in respect that her uncle's domicil was in England.

* * * See This case, No 18. p. 2379.

1788. June 25. ELISABETH and MARGARET BRUCE *against* JAMES BRUCE.

THE late Mr Bruce of Kinnaird was twice married. Mr James Bruce was the only child of the first marriage. Of the second there existed one son, William Bruce; and two daughters, Elisabeth and Margaret.

William Bruce, at an early period of life, entered into the service of the East-India Company, where he attained the rank of Major in the army. In the course of his service, he acquired about L. 9000, which he for the most part employed in purchasing bills of exchange, drawn by the Governor-General in India, upon the Directors of the East-India Company in London.

Some of these bills, at the time of his death, were in the hands of his correspondent in London; others were on board a ship, in its way home from India; and he had granted a power of attorney to three of his friends in Scotland, for uplifting the money, and laying it out on such security as should be most for his advantage. As to the remainder of his effects, they were situated in India, where he died on 30th April 1783. At this time he had no intention of returning immediately to Scotland; although he often professed his purpose of spending the last of his days in his native country.

Thus, a question arose between James Bruce, the brother-*consanguinean*, and Elisabeth and Margaret Bruce, the sisters-german of the deceased; the former

No 115.

Succession in moveable effects found to be regulated by the *lex domicilii*.

The succession of effects at sea, by the law of the country whither they were destined by the proprietor.

No 115.

contending, That the succession was to be regulated by the law of England, which, contrary to the law of Scotland, admitted no distinction, in cases of this sort, between relations by full and half blood ; while the latter maintained, that as their brother was a Scotsman by birth, as his residence in India was merely occasional, and as he had expressed his intention of returning home as soon as he had acquired a fortune sufficient for his purpose ; the law of Scotland ought to be the rule ; more particularly with regard to those effects, which, being in the way home to Britain, could not be said to be in England more than in Scotland.

It is unnecessary to repeat the arguments that were used ; the COURT having considered the plea maintained by Elisabeth and Margaret Bruces, with regard to the effects situated in India or in England, to be equally untenible, whether the *lex domicilii* or that of the *res sita* was to be the rule. With respect to the bills in their way to Britain, it was thought that they were to be regulated in the same manner, England being the place to which they were intended by the deceased, and where they were to be paid.

The judgement of the LORD ORDINARY was in these words :

* Finds, *imo*, That as Major Bruce was in the service of the East-India Company, and not in a regiment on the British establishment, which might have been in India only occasionally ; and as he was not on his way to Scotland, nor had declared any fixed and settled intention to return thither at any particular time, India must be considered as the place of his domicil. *2do*, That as all his effects were either in India, or in the hands of the East-India Company, or of others his debtors in England, though he had granted letters of attorney to some of his friends in Scotland, empowering them to uplift those debts, his *res sita* must be considered to be in England : Therefore finds, that the English law must be the rule in this case for determining the succession of Major Bruce, and consequently that James Bruce of Kinnaird is entitled to succeed, alongst with Elisabeth and Margaret Bruce, his sisters.*

A reclaiming petition was preferred by Elisabeth and Margaret Bruce, and refused without answers.

Lord Ordinary, *Monboddo*.

For Elisabeth and Margaret Bruce, *Dean of Faculty*.
Fol. Dic. v. 3. p. 223. Fac. Col. No 25. p. 41.

. This cause was appealed :

THE HOUSE OF LORDS, (15th April 1790) ' ORDERED AND ADJUDGED that the appeal be dismissed, and the interlocutors complained of affirmed.'