

No 37.

1797. January 31. HENDERSON against WILSON and MELVILLES.

A FACULTY to alter reserved in a regular entail may be validly exercised by a deed executed in England, and authenticated by the forms there established.

*Fac. Col. No 14. p. 30.*

\* \* \* See this case, *voce* TAILZIE.

No 38.

The heir of a person domiciled in England, is liable for heritable debts on his landed property in Scotland, without relief from his executor, although, by the law of England, such debts would have ultimately fallen on the latter.

1798. June 7. Mrs SARAH DRUMMOND, and her ATTORNEY, Petitioners.

DAVID DRUMMOND, merchant in London, died there, possessed of a landed estate in Scotland, over which he had granted an heritable security. Having died intestate, his brother James, likewise of London, succeeded as heir to the landed estate, and he, along with his mother and sisters, were jointly entitled to the executry.

James, with consent of his mother, took out letters of administration. He afterwards sold part of the landed estate in Scotland, and paid the heritable debt, for which he was allowed credit in the account of the personal property rendered by him in the prerogative court.

His mother and sisters afterwards brought an action against him, concluding, that the heritable debt should not affect their share of the executry.

James Drummond having died during the dependence of it, his widow, Mrs Sarah Drummond, as guardian to his son, and her attorney, sisted themselves as defenders.

THE LORD ORDINARY ' found, that by the law of Scotland, when a sum of money is secured upon lands by an heritable bond, and infestment, the lands are held to be the principal debtor; and, in respect that the estate belonging to David Drummond, over which the heritable bond in question is granted, was taken up by James Drummond as heir to his brother, and that the same is of much greater value than the sum in the heritable bond, found, that James Drummond is ultimately liable for payment of that heritable bond, without relief against the personal estate of David Drummond.'

Against this judgment, the defenders, *inter alia*,

*Pleaded*; By the law of England, this debt would have been ultimately a burden on the executry of David Drummond; and as it is now settled, that succession to personal property is regulated by the law of the domicile of the deceased; 7th June 1791, Hog against Hog, affirmed on appeal, Div. 10. *b. t.* 30th November 1791, Durie against Coutts, *IBIDEM*; the burden to which it is subject must be fixed by the same rule. On this principle, it has been found, that the heir of a person domiciled in England may claim part of his moveable succession, without collating his heritable property in Scotland;