

to be decided within the kingdom, and could not be judged by the law of any other kingdom; which reply the Lords sustained. No 22.

*Haddington, MS. No 3071.*

1626. November 15.

GALBREATH *against* CUNINGHAM.

No 23.

PROCESS was sustained by the Lords upon a bond granted in Ireland, after the Irish form, against a Scotsman, though he, with his family, had resided fourteen years, and were still residing in Ireland, and made denizens thereof; the pursuer having declared that he sought only execution against such lands and goods as the defender had in Scotland.

*Fol. Dic. v. 1. p. 327. Durie.*

\* \* See This case, No 2. p. 4430.

1626. December 8.

LO. BLANTYRE *against* FORSYTH.

No 24.

THE Lord Blantyre pursues James Forsyth for intromission with the monies of umquhile Patrick Mosman, debtor to the pursuer, to make the same forthcoming to him for his debt; this Mosman had fled out of Scotland to Rotterdam in Holland with some monies pertaining to the pursuer, where the said Mosman died; and before his death he delivered the monies to James Forsyth defender, resident then in Rotterdam, to be employed on his funerals, and other business concerning him. The defender therefore *alleged*, That he could not be convened here in Scotland for the alleged debt foresaid, because he, his wife and family, were actual residents in Rotterdam, where they had dwelt these ten years bygone, and yet remain there *animo remanendi*; likeas, the deed is libelled to be done in these foreign parts out of this country, and so *neque ratione rei, neque personæ* it is competent to the jurisdiction of the Lords. This allegiance was repelled, because the parties were all Scotsmen, but the LORDS sustained the process before them, to produce execution only against the defender's goods and lands which he had within Scotland, and no others.

A Scotsman residing in Holland *animo remanendi*, being pursued in Scotland, process was sustained against him, but only to produce execution against his goods in Scotland. The reverse of this was found, No 23. p. 4816.

*December 9.*—IN this abovementioned cause of the Lord Blantyre's, wherein he pursued by his summons, that it might be tried that Mosman intromitted with his monies, and fled therewith out of Scotland; and that Forsyth, defender, after his decease intromitted therewith, and with his goods and gear, and so should pay the money libelled to the pursuer; it was *alleged* for Forsyth, who was convened as intromitter with Mosman's goods and gear, that this action pursued against him as intromitter could not be sustained, until first sentence were recovered against the heirs or executors of umquhile Mosman, or some to repre-

No 24.

sent him, declaring the debt against him: and thereafter he might be convened as intromitter, and not till then; and, if he might be convened as intromitter, and the debt tried also against the defunct in one summons, yet some person, as representing the defunct, ought to be convened *hoc nomine*, seeing he is a stranger, and some other nearest of kin ought to be convened, against whom, the debt owing by the defunct, ought to be declared. This exception was repelled; and the Lords found, that both the debt owing by the defunct might be tried against this defender, and he also convened as intromitter with the defunct's goods in one summons by this same pursuit, and that there was no necessity of a preceding sentence against any representing the defunct, but that both might be tried in this same pursuit, albeit nothing was extant to constitute the defunct debtor to the pursuer of before; and also they found, that there needed no other person to be called to this pursuit to represent the defunct, seeing the defender, albeit a stranger, and dwelling out of the country, and also libelled to have intromitted out of the country, did in effect represent him, being convened as intromitter. See SERVICE AND CONFIRMATION.

Act. Lermouth.

Alt. Primerose.

Clerk, Scot.

Fol. Dic. v. 1. p. 327. Durie, p. 243, &amp; 244.

No 25.

1627. July 3.

HEPBURN against MONTEITH.

A SCOTSMAN, residenter in another country, and remaining there *animo remanendi*, if he have goods or gear or lands in Scotland, he may be convened at a creditor's instance in Scotland.

*Auchinleck, MS. p. 214.*

No 26.

Although a defender in a process resided with his family in London: *animo remanendi*, and the pursuit was upon a contract executed in England, yet process was sustained against his person when he came to Scotland,

1629. March 7.

WILKIE against MUIRHEAD.

A PURSUIT at John Wilkie's instance, for payment of certain prices of victual sent by him to David Muirhead, was sustained against the said David, being pursued in Scotland, before the Lords of Session, albeit the defender's procurator's *alleged*, That he could not be convened *in hoc foro*, seeing he and his family were actual dwellers and residenters at London, where they remained *animo remanendi*; likeas, the victual was English victual, and the pursuer then dwelt in Berwick, where he is burghess; and the writ for the bargain was made and dated at Berwick; whereby the defender *alleged*, That neither *ratione domicilii*, *neque rei de qua agitur*, *neque contractus*, he was subject to this judicatory; which allegiance was repelled, and the process in this judgment sustained against him, to have execution against his person when he came to Scot-