

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, & 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 procurators *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-