

THE LORDS sustained the title libelled on, as a sufficient title in this process, the pursuers confirming before extract.

No 51.

Act. *Borwel.*Alt. *Ila.*Clerk, *Dalrymple.*, *Fol. Dic. v. 1. p. 321. Bruce, No 36. p. 45.*

S E C T. IV.

Assignations not in the Scots Form.

1627. December 11. FALCONER *against* HEIRS of BEATIE.

IN a registration pursued by John Falconer as assignee by progress, made by Andrew Wilson Scotsman, resident with his wife and family in Germany, to a bond of 1000 merks, owing to him by Robert Beatie burgess in Montrose, against the heirs of the said Robert Beatie, it being *alleged*, That the first assignation made by Wilson, which was made in Germany, where the said Wilson dwelt, was null, because it wanted witnesses insert therein, and so could not produce action by the law of this realm; which allegiance was repelled, and process sustained thereupon, the pursuer either proving that it was the custom in that part of Germany where the assignation was made, that such writs are sustained without witnesses, or else finding caution to warrant the defender at the cedent's hands, any of the which two being done, the LORDS would sustain the assignation, albeit made betwixt two Scotsmen, and albeit pursued in Scotland, and disconform to the Scots law. See 12th December 1627, and 15th January 1628, *inter eosdem*; *voce* HERITABLE AND MOVEABLE.

Act. *Falconer.*Alt. *Mowat.*Clerk, *Scot.**Fol. Dic. v. 1. p. 321. Durie, p. 319.*

1636. July 16.

SINCLAIR *against* MURRAY.

AN assignation being made by Murray, one of the King's butrymen in England, to another Murray, in and to some bonds and debts owing to him by his debtors, which, after his decease, were used for the ground and title of a pursuit made by the assignee, which being quarrelled by the defender, viz. the person who would have been heir to the cedent, that it was null, because it designed not the writer of the body of the assignation; and it being *answered*, That

No 52.

Assignation made in a foreign country, of a bond due by a debtor in Scotland, was sustained, though wanting witnesses, being according to the form of the country.

No 53.

An assignation made in England, of effects in Scotland, and granted by one Scotsman to another, was

No 53.
sustained,
though the
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being formal
by the *lex*
loci.

it was written in England, and so was sufficient, although wanting that solemnity, which could not extend to a writ done without the kingdom, where the law was made.—And it being *duplied*, That this assignation being made by one Scotsman to another, and of debts in Scotland, it ought to be ruled by the Scots law; the LORDS repelled the allegiance, and sustained the assignation, being made in England, where they found that there was no necessity that the writ should design the writer; neither yet would the party offer to design his name, the cedent being dead, and it being written by an Englishman, who might be unknown to the assignee; neither was it respected that the parties were Scotsmen and of a Scottish subject, being done out of the country, and by the cedent, who was then an actual resider in England, and servant to the King.

Act. *Gibson*.

Alt. ———.

Clerk, *Gibson*.

Fol. Dic. v. 1. p. 321. Durie, p. 817.

1664. December 15. DAVID ERSKINE against DAVID RAMSAY.

No 54.
An assign-
ation made
in England,
by one Scots-
man to ano-
ther, of a bond
due in Scot-
land, was
sustained,
though it
was subscrib-
ed by one
notary only,
being formal
by the *lex*
loci.

DAVID ERSKINE of Dun, assignee constitute by Elizabeth Erskine and Cecil Ritchie, heirs-portioners to umquhile James Abercromby, to a bond granted by umquhile — Ramsay of Ballinbrock, pursues David Ramsay, as representing his father, for payment.—It was *alleged* no process upon the assignation, the same not being valid according to law, it being an assignation to 1000 merks, and subscribed by one notary only.—To which it was *replied*, That the cedent living in Queensbridge, and born there, the assignation was subscribed according to the custom of that place, by one notary, which custom the pursuer offered him to prove.—THE LORDS, in regard the cedents were out of the country, found that the assignee should either produce a procuratory from the cedents, or prove the custom of Queensbridge to be such, or that the assignee should find caution *de rato*.

Fol. Dic. v. 1. p. 321. Newbyth, MS. p. 12.

No 55.

1676. November 28. SCOT against TOISH.

AN assignation, being made in Holland, according to the custom there, by way of instrument, under the hand of a notary, a tabellion having retained the warrant in his hands, signed by the parties, was sustained, in respect of the custom and *consuetudo loci*.

Reporter, *Justice-Clerk*.

Fol. Dic. v. 1. p. 321. Dirleton, No 390. p. 191.