

S E C T. III.

Testaments confirmed in England.

1627. February 16. LAWSON *against* KELLO.

IN an action at the instance of Lawson English woman against Bartol Kello, for payment of a sum contained in an English bond, made by the defender to the pursuer's umquhile husband who was citizen of London, and which the pursuer claimed, as executrix nominated to her husband, by a testament confirmed in London, the LORDS sustained the action at the instance of the said executrix, and her procurators constituted by her, to pursue upon that bond and testament, albeit there was no special inventory given up, nor contained in the said testament, the pursuer proving that the form of England was to confirm testaments in that manner, and that the same would furnish actions to the executors of the defunct against their debtors, albeit no special inventory, nor particular mention of the debt-acclaimed were in that testament; the pursuer showing the bond to qualify the debt, and that she was confirmed executrix to the defunct; which the LORDS found sufficient, this being proven, or otherwise they sustained the pursuit, the pursuer finding caution to warrant the defender of this debt at all hands, who might claim the same from him, the option of the which two, viz. either to prove the custom, or to find the caution they gave to the pursuer, and that one of them should suffice to sustain the action; and this English testament was sustained to produce this action at an English woman's instance in this realm; albeit it was alleged, that no writ could produce action in this realm, which dissented from the form of writs allowed and required by the law of the kingdom where the pursuit was made, which was repelled; caution being found *ut supra*.

Act. Mawat.

Alt. Lermonth.

Clerk, Hay.

*Fol. Dic. v. 1. p. 320. Durie, p. 277.*1637. February 25. ROB *against* FRENCH.

UMQUHILE THOMAS FRENCH, being servitor to the King's Majesty in England, makes his testament in Scotland, and takes it with him to England, where he dies, and leaves to the pursuer, called John Rob, and to some other pursuers, certain legacies; and this testament being confirmed in the Prerogative Court

No 48.

A testament, confirmed in England by an executor nominate, was sustained as a good title in Scotland, though no inventory was given up, it not being the custom in England to make up inventories.

No 49.

The legatees, in an English testament were found obliged to confirm, the executor having confirmed.

No 49.
ed in Eng-
land, and af-
terwards re-
nounced.

of Canterbury, and Robert French, clerk of Kirkcaldy, his executor nominated by him, being confirmed there his executor, but no inventory given up, nor contained therein; upon this testament so confirmed in England, the legatars pursuing the said executor for payment, the LORDS would not sustain process upon this testament confirmed in England, until the time the legatars should confirm a testament in Scotland; seeing the executor was here compearing, and renouncing to be executor.

Act. ———.

Alt. Sibbald.

Fol. Dic. v. I. p. 320. Durie, p. 831.

1666. July 18.

BROWN and DUFF against BIZET.

No 50.
Though the
heirs of a
Scotsman,
dying abroad,
by the *lex loci*,
have right to
all debts or
goods belong-
ing to him,
without con-
firmation;
yet they can-
not pursue
for debts due
to him in
Scotland, un-
til they are
confirmed,
according to
the forms of
the law of
Scotland.

BROWN and Duff having obtained decret against Bizet, for a sum due to umquhile Andrew Duff merchant in Poland, Bizet raises suspension and reduction upon this reason, that this sum having been *in bonis defuncti*, the chargers could have no right thereto, till it were established in their persons, by a confirmation in Scotland, by the commissaries of Edinburgh, *ut in communi patria*. —It was answered, Moveables *sequuntur personam*, and therefore, wheresoever the moveables be, they are regulated according to the law of the place where the defunct resides, and it is instructed by the testimony of the consul, and counsel *civitatis regiae pucensis*, that by the common law, and law of that place, moveables belong to the wife and bairns, and the pursuers were so cognosced by them, declaring the said Clares Brown wife, and the said — Duff, the only daughter of Andrew Duff; and therefore they have sufficient right without confirmation in Scotland, which appears by the act of Parliament, James I. c. 88. Par. 1426.; and it hath been still the custom so to do, and that it was so decided, Lawson *contra* Kello, No 48. p. 4497.—It was answered, That it was otherwise decided, in the case of Rob *contra* French, No 49. p. 4497. And there was no reason, that those that lived out of the country *animo remanendi*, should be in better condition than those that resided in the same, and behoved to confirm and to pay the quot.

THE LORDS found, That the testament behoved to be confirmed by the Commissaries of Edinburgh; for having considered the old act of Parliament, they found, that the point there ordered was, to what judicatures the merchants going abroad to trade should be liable, and that such as went abroad not *animo remanendi*, should be subject to the jurisdiction of that place where their testament would be confirmed, (*viz.* where they had their domicils,) but those that went out of the country to remain are excepted; but nothing expressed where their testament should be confirmed; and for the decision, the point in question was not whether a confirmation in England was valid, but whether a confirmation without an inventory was valid; and therefore, seeing nothing was