

No 27.

party is deprehended within the territories of that Judge, and is not kept by the laws of this kingdom, where there is a sovereign and superior supreme judicatory, where such actions may be pleaded, and where all parties, within whatsoever subaltern judgment in the realm, may be both convened and sentenced; and, if this ground were maintained within burgh, then of the like reason outwith burghs in all sheriffdoms, one Sheriff may proceed against parties in other sheriffdoms not subject to his court, which were to confound all judgments, and greatly should prejudice parties; notwithstanding of all which, the decret was sustained, and the custom within burgh, and warrant of the Lords letters was allowed.

*Act. Morvat.**Alt. Barclay.**Fol. Dic. v. I. p. 327. Durie, p. 779.*

1639. March 23.

COL. BROG'S HEIR *against* \_\_\_\_\_.

No 28.

Found (the reverse of Blantyre against Forsyth, No 24. p. 4813.) that a Scotsman residing in Holland *animo remanendi*, may not be prosecuted here.

ONE being served and retoured heir to umquhile Colonel Brogs, who died in the Low Countries, and served there at the wars where he died, this Heir pursuing another Scotsman for delivery of the said Colonel's heirship goods, libelled to have been intromitted with by the defender in Holland, where the goods were then, the LORDS found, seeing the defunct lived and died in Holland, and that the goods were alleged to have been in Holland when the defunct died, and where they were intromitted with by the defender, as was libelled; and, that the defender was an actual residenter in Holland, where he was alleged to have intromitted with the same, and did reside there these many years of before, and ever sinsyne, and as yet he being there married, and an actual dweller there *animo remanendi*, albeit he was a Scotsman; that no process ought to be granted against him in this country for the said intromission, but that he ought to be pursued therefor in Holland, *quia actor debet sequi forum rei*; neither was it respected that the pursuer declared, that he insisted in this pursuit against the defender, being a Scotsman, that he may have execution against such of the defender's goods and estate as he had within Scotland, for satisfying of the heirship, as he should recover by this sentence, which the LORDS would not allow.

*Fol. Dic. v. I. p. 327. Durie, p. 885.*

No 29.

1642. February 1.

DOUGLAS *against* CUNNINGHAME.

JAMES DOUGLAS of Chester pursuing Sir David Cunninghame and George Muirhead, for payment of a sum of money, conform to an English bond, and they *alleging*, that they could not be convened in this kingdom to answer be-