

a custom, albeit it were verified, was only municipal, and to take effect within the territory and jurisdiction where it was in force ; and that, as to such estate and goods as were possessed by the debtor within these bounds where the law was obligatory, and whereof the debtor had the benefit as a native or denizen. But so it is, that Jossie being a Scotchman, and residing at Bourdeaux only as a factor or merchant, having no domicile of his own, after contracting of this debt fraudulently retiring to Scotland, where there is no such custom or privilege, being pursued for a most just debt, that the law of this kingdom may have execution against his estate here ; the said pretended custom of France can never be respected, no more than a merchant here having an estate in France, and being incarcerated in Scotland is liberated upon a *cessio bonorum* ; which could not hinder any of his creditors in France to pursue him there, and obtaining a decret there, to execute the same against any goods he hath in France. And if it were otherwise, it would open a door to infinite fraud and, circumvention ; which would destroy all trade and commerce with strangers, it being easy to a merchant or factor, who is in credit and reputation abroad, clandestinely, by bill of exchange and loading of commodities under the name of another, to transmit his estate, and then retire himself.

The Lords did decern against Jossie, and found the letters orderly proceeded ; in respect that there was nothing produced for instructing of that pretended custom ; and that there was decret given thereupon by the Parliament of Bourdeaux : but superseded the extract thereof until the next session,—that, if the custom and authority of Parliament interposed were instructed, they might then resume the foresaid debate, and decide *in jure* if it were obligatory here, as being *res judicata*.

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1672. June 26.

MOUBRAY against SPENCE.

IN a reduction of a disposition of lands, at the instance of Moubray against Spence, to whom one — Stewart disposed some lands in Orkney, upon the Act of Parliament anent Dyvors, as being made to Spence as a confident person, in so far as he was intrusted and employed as agent here at Edinburgh for Stewart in all his business ; and therefore, besides the disposition bearing for an onerous cause and sums of money received ;—it was ALLEGED, That he ought to condescend and instruct the onerous cause for which the right was made.

It was ANSWERED for the defender, That he was not such a person as did fall within the meaning of the Act of Parliament ; which was only such confident persons who, *ratione sanguinis*, or by reason of the nearest relation of affinity, such as *utricus et gener*, or a good-brother, had interest in the disponent ; whereas the defender had no relation or contingency of blood, and was only called as an agent and *ratione officii*.

The Lords found the answer relevant to assoilyie from the reduction, unless the pursuer would prove, *scripto vel juramento*, that, notwithstanding the disposition did bear for an onerous cause, yet truly there was none. For, as to former decisions, it was never decided, but in regard that rights were made to persons related by consanguinity or affinity, as said is.

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