

1692. December 22.

KINCAID against ANDERSON of Dowhill.

No 62.

THE LORDS found the confirmed testament by the Commissary of Glasgow, a sufficient warrant and security whereon Dowhill might pay ; though the defunct did retire, about a fortnight or twenty days before his death, into the bounds of the commissariat of Campsie or Hamilton ; and Dowhill *contended* the confirmation ought to be made there ; and that any hereafter confirming there, will be preferred to Kincaid, as having right *a non suo judice* ; for the LORDS considered his domicil as still at Glasgow, and that twenty days did not translate or give him *forum et larem* elsewhere ; though he had no family, and by removing himself out of Glasgow, he could say with Bias the philosopher, *omnia mea mecum porto*.

*Eol. Dic. v. I. p. 331. Fountainball, v. I. p. 536.*

1708. January 7.

LORD MERSINGTON'S Creditors competing.

No 63.

SIR ALEXANDER SWINTON of Mersington having given L. 100 Sterling to the African Company, as a part of L. 400 he signed for Sir Alexander Cuming of Culture, his son-in-law ; James Blackwood, Rothead of Whitsomhill, and other creditors, confirm themselves executors creditors to him in that sum, by the Commissaries of Edinburgh. Sir John Swinton, his nephew, being also a creditor, he confirms himself before the Commissaries of Lauder ; and in a competition, Culture, &c. craving preference, as being first confirmed, Sir John *objects*, That they had confirmed in the wrong court ; for his estate lying in the Merse, and his lady and family there, and it being his principal messuage, the confirmation at Lauder was the most formal, legal, and competent, in which jurisdiction his lands lay, especially considering that he died there. *Alleged*, That by his station as a Lord of the Session, he was tied to Edinburgh for six months in the year, and his attendance on the bills, &c. even required a part of the other six ; so Edinburgh behaved to be his principal residence, and his going to his country house could be looked on as no more but a recess for his diversion and recreation ; and Edinburgh is the *communis patria* to all Scotsmen ; and so *mobilia sequuntur personam* ; and where he most resided, there his effects must be confirmed. *Answered*, Where a man has more domicils than one, (as the most in public offices and stations have) the characteristics to discern the principal, are, where his wife, family, and servants stay ; where his land-estate lies ; where he chuses to reside when the affairs of his employment supersede his attendance ; and where he happens to die ; now all these concur for his house at Mersington, to sustain the confirmation by the Commissary of Lauder ; for there he had fixed his estate ; there his Lady and family dwelt ; there he laboured a room ; whither he retired in the vacance ; and there he died ; *l. 7 C. de incolis*,

The testament of a Lord of Session being confirmed in Edinburgh and also in the country, where his estate lay and where he died, the Lords preferred the confirmation before the country Commissary.