

fore any Scots Judge, because they dwelt presently in England, where they have dwelt these twenty-four years continually *animo remanendi*, and therefore ought only to be convened there, seeing *actor sequitur forum rei*, and that the subject is for a bargain made in England, and for English business; the LORDS repelled the allegiance, seeing the bond was made betwixt Scotsmen, and to have execution for Scots goods lying in Scotland.

No 29.

Act. ———.

Alt. *Johnston.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 327. Durie, p. 889.*1682. *February.*Mrs BROOMLEY *against* Sir ALEXANDER FRAZER'S Relict, Her Mother-in-law.

No 30.

IN an exhibition at the instance of Mrs Broomley, against the relict of Sir Alexander Frazer, of all deeds made by him wherein any clause was conceived in favours of the pursuer,

Alleged for the defender; That she not being a Scotswoman, but living in England *animo remanendi*, was not liable to answer any pursuit here, having only a personal conclusion against her.

Answered; The defender is liable to the Scots jurisdiction, in respect she has a jointure in Scotland, against which there might be execution for damage and interest, in case she did not exhibit.

THE LORDS considering this was a new case, delayed to determine it; but they inclined to assoilzie the defender.

*Harcarse, (EXHIBITION.) No 481. p. 131.*1697. *July 14.*STUART *against* SCOT.

No 31.

ARBRUCHELL reported Mr John Stuart younger of Blackhall, against Jean Scot, liferentrix of the lands of Mearns, and now spouse to Drummond of Hawthornden. It was an advocacy of a pursuit against her, before the Sheriff of Renfrew, upon the act 25th 1491, and act 15th 1535, to find caution to uphold and repair the houses on the liferented lands. The reason of advocacy was, I live not within the shire of Renfrew, *et actor sequitur forum rei*; and so you cannot convene me *extra territorium*. *Answered*, The acts of Parliament allow an edictal citation at the market-cross where the lands lie; and I, *ex superabundanti* have by a supplement cited you on my libel. *Replied*, Letters of supplement are only designed for citing of persons called for their interest, as in actions of making forthcoming, &c. but never against principal parties called as defenders. THE LORDS, considering the competency of jurisdictions, remembered the rules of law are, that *unusquisque forum sortitur vel*

A liferentrix was pursued before the Sheriff, where the liferent lands lay, to repair the houses thereon. The Lords advocated the cause, because the defender did not reside within the same county.

No 31. *ratione originis, seu domicilii, vel loci contractus, delicti, vel ratione rei sitæ*; but it is not sufficient, that because you are infest in lands lying within such a shire; therefore you must answer as to any action relating to these lands before the Sheriff of that shire; though you dwell without his territory. But here the first act of Parliament being before the institution of the College of Justice, the Sheriff seems to be made Judge competent to such actions privative of all others. On the other hand, the Lords considered the fiar had suffered this to lie over for thirty years, and now pursued her to repair, (so cognition must first be taken in what condition she received them at her entry to her life-rent;) therefore they advocated the cause from the Sheriff to themselves, though the Sheriff *in prima instantia* is certainly competent thereto, if the defender dwelt within his jurisdiction.

Fol. Dic. v. 1. p. 328. Fountainball, v. 1. p. 784.

December 29.

JOHN HALDANE, Esq; Collector of his Majesty's Customs at Prestonpans *against*
The YORK-BUILDING COMPANY.

No 32.

In an action at the instance of a Scotsman against the York-Building Company, the defenders objected to the competency of the jurisdiction. The Lord's, in respect of the Company's having an estate in Scotland, repelle the objection.

MR HALDANE having borrowed L. 3000 Sterling from the York-Building Company, and as a security deposited with them L. 6000 Sterling of their own capital stock; he made an agreement with the Company about the time the L. 3000 became payable, that if that sum should be paid in Scotland, such payment should be accepted in discharge of the above mentioned security. A bill was in consequence of this agreement accepted by Mr Haldane, and duly paid to the Company's managers in Scotland; but the Company not having transferred the L. 6000 capital stock to Mr Haldane or his trustee, he brought an action before the Court of Session against the Governor, Directors, Managers, and Assistants of the said Company for the value of the said L. 6000 capital.

The defenders *excepted* to the competency of the Court, upon the following grounds.

1mo, That they did not reside within the territories of the jurisdiction of the Court of Session, but at London, and were thereby subjected to the Courts of England, according to the rule, *actor sequitur forum rei*.

2do, Since the pursuer in this case was insisting for a transference to a share of the Company's stock, this by their rules could not be done but in their books; and therefore it ought to be craved only in that place where these were.

3tio, The defenders being pursued as administrators to a Company, they were not obliged to answer but in the place where the administration was committed to them, as in the case of tutors, executors, and others entrusted to offices;