

No 64.

fore his decease, and had no fixed domicil there ; notwithstanding that the regiment in which he was a soldier had resided at Glasgow sixty days before his death. For the LORDS found, that in that case his testament ought to have been confirmed by the Commissaries of Edinburgh, *tanquam commune forum*.

*Fol. Dic. v. 1. p. 331. Forbes, p. 498.*

1711. February 22.

JOHN HENRY Cordiner in Edinburgh *against* JOHN GLASSELS Merchant in London, and his Factor.

No 65.

A person died in the expedition to Darien before he went out of the Scottish seas. The confirmation of his testament in the commissariat of Glasgow was preferred to another confirmation before the Commissaries of Edinburgh, in respect the defunct left his wife and family in Glasgow, where she carried on his former trade.

IN the competition betwixt John Henry and John Glassels, both executors creditors to Thomas Glassels, who died in the expedition to Darien before he went out of the Scottish seas ; THE LORDS preferred John Henry, who confirmed in the commissariat of Glasgow, to John Glassels who had confirmed before the Commissaries of Edinburgh, in respect the defunct had left his wife and family at Glasgow, where she lived prosecuting his former trade of a merchant, till they got notice of his death. Albeit it was *alleged* for John Glassels, That the defunct having gone abroad, in order to be a planter in Darien, either his *domicilium* behoved to be reputed in Darien, where he designed to fix and plant, *L. 27. ff. ad municipal* ; or, he must be understood to have had none at all, from his intention to desert his former habitation, and set up elsewhere, *Ibid. § 2. in fin.* ; in either of which cases his testament could only be confirmed in the commissariat of Edinburgh, as *commune forum* ; and it is not the wife's residence that makes the husband's dwelling place, but she follows his :—In respect it was *replied* for John Henry, That a man cannot be thought to change his habitation by changing his manner of living, from a close shopkeeper, to that of a travelling merchant ; or by taking up a design to settle abroad, till he actually settled and resolve to continue there ; for the definition of *domicilium, ubi quis sedes & tabulas habet, & rerum suarum constitutionem facit*, runs in the present, and not in the future time. And it is unreasonable to assert, that a person went abroad (*animo remanendi*) to a place he had never seen, and where he knew not what reception he would meet with.

*Fol. Dic. v. 1. p. 331. Forbes, p. 503.*

No 66.

1742. June 17. Competition ANDREW CHALMERS with JOHN BLAIR, &amp;c.

In a competition between two persons, one of whom had applied to be deemed executor

JOHN BLAIR having moved an edict before the Commissaries of Edinburgh for decessing him executor *qua* creditor to the deceased Mr Hugh Murray Kynnymound, advocate ; compearance was made for Mr Chalmers, who had been declared executor *qua* creditor to Mr Murray before the Commissaries of St An-