

No 52. interest betwixt him and the master of the tolbooth, he had no warrant nor mandate, and therefore, in all form of process, they, being strangers, ought to have gotten a lawful citation, and time to answer *in communi forma*.

*Gosford, MS. No 806. p. 507.*

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DIVISION VI.

*Forum competens* with regard to Executors, Factors appointed by the Lords, &c.

1684. *March.*

No 53.

ELISABETH DRYDEN *against* ELLIOT of Dunlabyres, and ANDREW AINSLEY.

AN Englishwoman, who was administratrix in law to her husband in England, pursuing for a debt resting to herself in Scotland; the defender *alleged* compensation upon a debt owing to him by the pursuer's husband, for which she is liable as administratrix.

*Answered* for the pursuer; By the law of England administrators are not liable to foreign debts. *2do*, The pursuer cannot be liable as administratrix in England for debts due in Scotland, seeing she is not confirmed executrix as to any sums owing there to her husband; and as administratrix of his English debts, can only be pursued in England, where he, who was an Englishman, died.

THE LORDS sustained the second answer made for the pursuer.

*Fol. Dic. v. 1. p. 330. Harcarse, (EXECUTRY.) No 460. p. 126.*

1732. *July.*

No 54.

WHITE *against* SKENE of that Ilk.

THOUGH regularly an English executor is not bound to account in Scotland, or any where, save in the court whence he derives his powers; yet a creditor having got letters of administration in England, and thereupon intromitted with the defunct's moveables; and thereafter pursuing the heir in Scotland; the defence was sustained, *quod præsumitur intus habere*, though the creditor alleged she had applied her intromissions otherwise, and was not bound to account in Scotland. For no law can justify twice payment. *See APPENDIX.*

*Fol. Dic. v. 1. p. 330.*