

such general service would have carried moveables. The Roman law made no distinction between heritable and moveable; but the case is different with us. A general service cognosces heirs to be heirs, but it gives no title. It would not be sufficient to authorise the exacting of payment: confirmation or special service would be necessary to complete title.

JUSTICE-CLERK. The grounds of law laid down by Lord Braxfield are just. There is no such thing as a conveyance to heirs whatsoever, while the father is alive: if there were, the subject might be conveyed by them; but the succession cannot open to them, because the father is *fiar*.

On the 9th March 1779, "The Lords found that the heir of the body of Agnes, the predeceasing daughter, has a right *jure representationis*."

*Act.* Ilay Campbell, J. M'Laurin. *Alt.* W. Baillie, D. Rae. Hearing in presence.

1779. June 18. FRANCIS BENSON, Merchant in London, Petitioner.

## PROCESS.

FRANCIS BENSON set forth, in a petition, that his character, as a man and as a merchant, has been severely attacked in a case between *Mozely* and *Black*, to which he is no party: and he, therefore, craved to be allowed to reply to the aspersions thrown out.

The Lords were of opinion that he who is no party in a cause cannot be received to reply in the cause; but that, if he is *incidentally* injured, he must seek redress by an *incidental* complaint.

On the 18th June 1779, "The Lords refused the petition, reserving to the petitioner to apply by way of complaint."

*Act.* G. Buchan Hepburn. *Alt.* Neil Ferguson.

1779. June 23. JOHN WOOD of the Island of St Christopher's *against* ELLEN GRAINGER.

## FOREIGN—ANNUALRENT.

A debt contracted abroad being sued for in this country, found that the interest must be restricted to 5 *per cent.* though a larger rate was allowed in the *locus contractus*.

[*Faculty Collection*, VIII. 153; *Dict.* 4532.]

COVINGTON. In the case, *Sinclair* against *Fraser*, the House of Lords found that the decret of a foreign Court was *prima facie* evidence of its being just, reserving every challenge against it. The foreign court gave no judgment as to the *quantum* of the attorney's claim: the decree is purely in absence; the person claiming must show that the charge is reasonable. The interest must be *secundum leges loci*.

GARDENSTON. If the defender had gone to the Island of St Christopher's,

she would have been heard against the decret in absence, and so also must she be heard *here*.

KENNET. I doubt as to annualrent, for none is given by the foreign court : at no rate can this demand go to annualrents of costs, for the demand is made *from* the time of the citation. Now, at that date, costs could not have been incurred.

JUSTICE-CLERK. Here the objection is not, that the debt is not due, but that there is no sufficient evidence of the decree having been obtained. The costs must be modified *secundum bonum et æquum*.

ALVA. Supposed that the costs had been taxed at St Christopher's.

PRESIDENT. In former times the Court would have refused to sustain action on this foreign decree ; but, in the case of *Sinclair* and *Fraser*, it was otherwise determined by the House of Lords ; and so also that House found in another case, *Wilson*, 1758. As to the costs, the foreign court had them not under cognisance : we cannot modify them as it did not modify them : the modifying the costs must be the act of the court that pronounced the decree : the decree has not found interest due, neither can we.

KAIMES. A foreign decree, if it appears formal, must be held *pro veritate* ; but here the defender was not in the Island of St Christopher when the decree was pronounced, and therefore, as the law of England stands, no valid decree could pass against her. [This was not pleaded by the defender.]

GARDENSTON. If nothing is urged against the decree, we must hold the debt to be just, and then, according to our constant practice, we must decree interest from a year after the furnishings.

ELLOCK. That would be proper if the action was brought for payment of a debt ; but the case, here, is an action for implement of a foreign decree, and we can regard nothing but that decree.

MONBODDO. The foreign decree is *probatio probata*, and therefore interest ought to be awarded on it.

On the 23d June 1779, " The Lords found that action lay on the foreign decree ; that no costs were due ; that interest, at the rate of 5 per cent., was due from the date of the citation in this process ;" varying Lord Alva's interlocutor.

*Act. J. Anstruther, jun. Alt. J. M'Laurin.*

1779. *June 25.* In the Petition and Complaint of FRANCIS FRASER, Sheriff-officer, *against* JAMES MACRAE of HOUSTOWN.

#### SUMMARY APPLICATION.

THE Lords found the complaint incompetent in this summary manner, and they were of opinion, that there ought to have been an action, which, by act of Parliament, would have been tried summarily ; and that there is a material distinction between a summary action and a summary complaint : That, as there was here an alleged contempt of the Sheriff's authority, the application ought to have been made to that court which was said to have been contemned.

For the complainer, George Ferguson.