

to times before the establishment of feudal states, we shall find the notion of one's native country stronger without compulsion than it could be in feudal states upon compulsion or contract.] The *forum originis* has the effect of founding an action, should the party ever come into Scotland. [A very weak effect; for then the *forum domicilii* would generally serve the purpose of the *forum originis*.] Here is a *quæstio status*, to be governed by principles totally different from the *forum originis*. We are not here speaking of a Frenchman and a Frenchwoman, but of two persons subject to the same sovereign. In order to found her action, she produces evidence of her marriage in England; and she concludes, that, on account of the adultery of Sir Thomas Wallace, she should be divorced from him. Protestant states admit of divorce for adultery or wilful desertion. In England, such divorce can only be obtained by Act of Parliament. People who marry in England must lay their account with being tied together for life, unless a divorce can be obtained by Act of Parliament. What Lady Wallace asks is what no woman in England can complain for not getting.

On the 10th February 1789, "The Lords remitted to the commissaries to dismiss the action;" adhering to their interlocutor, 9th August 1788.

Act. Henry Erskine. *Alt.* R. Blair.

Diss. Alva, Justice-Clerk, Henderland, Hailes, Ankerville, Dunsinnan.— [Dreghorn did not vote, having not read the papers, as being of the Outer House, second division, by Act of Sederunt, but he inclined to the interlocutor.] This question was carried by the President's casting vote; and the more I consider the case, the more I am satisfied that the judgment is erroneous.

1789. February 15. ROBERT COLT against GEORGE WADDELL.

GENERAL ASSIGNATION.

Disposition of all sums of money due by bond, does not comprehend those due by heritable bonds.

[*Fac. Coll.* X. 111; *Dictionary*, 5,022.]

HAILES. Mr Waddell improperly affects ignorance of the relation of Mr Colt to the testator; and still more improperly insinuates that Oliver Colt was an *heredipeta*. One might imagine, from Mr Ross's information, that Oliver Colt gave Garturk a good dinner once a-week, whereas they lived at a great distance from each other, and had very little communication. Such liberties ought not to be taken. It seems impossible that wadsets and adjudications, rights of property, can fall under a clause where *bonds* is the leading word. But I doubt how moveable bonds should be comprehended under the generality, and not heritable bonds also?

SWINTON. I had great hesitation in pronouncing this interlocutor; but I chose to follow the precedents of the Court. I think that wadsets do not fall under the clause; but may not adjudications come under the word *decreets*?

PRESIDENT. I am clear as to the intention of the testator ; and what authority to limit the general term of bonds to such as are personal ?

On the 13th February 1789, "The Lords decerned in favour of George Waddell ;" adhering to the interlocutor of Lord Swinton.

For Waddell, pursuer,—M. Ross. *Alt.* R. Blair.

Diss. as to adjudications, Swinton.

Diss. as to heritable bonds, Swinton, Hailes, Dunsinnan, President.

1789. February 20. MARY FOREST against LIEUTENANT CHRISTOPHER FUNSTON.

FORUM COMPETENS.

Holding a military office in Scotland, without actual residence, does not create a domicile.

[*Fac. Coll. X. 112 ; Dict. 4823.*]

HAILES. The defender is master-gunner at Blackness Castle ; this is not merely a name entitling him to a salary, but it is a stationary office. He has military stores committed to his charge, and he has an apartment, such as it is, in the garrison ; and if his domicile be not there, we know not where it is. An execution against him, at his domicile in Blackness Castle, would be a proper one. He says that his domicile is at Strathbane in Ireland : but I have no evidence of this ; and, until I am better informed, I must presume that his *sedes rerum et fortunarum* is at Blackness, and that he has a temporary leave of absence from the Commander-in-Chief, which permits him to be elsewhere than in the place where his duty fixes him.

JUSTICE-CLERK. It matters not whether Lieutenant Funston be absent with or without leave ; he is a foreigner, and has no residence in this country.

ESK GROVE. There is no law which says that a man, being an officer, and having an office and a house annexed to it in Scotland, will, although a foreigner, be amenable to the jurisdiction of Scottish courts. The governor of Fort Augustus has a very good house there, and yet no declarator of marriage brought against him in Scotland would be of any avail. [To make his *species facti* applicable to the purpose, he should have put the case of the deputy-governor, who does reside, instead of that of the governor, who is understood to draw a mere pension without any obligation to residence : if governor Trapand be not amenable to the courts in this country *ratione domicilii*, I know not what other domicile he can have : he will be like Sir Thomas Wallace, who, as the Court has found, is amenable to no court for adultery.]

On the 20th February 1789, "The Lords remitted to the commissaries to dismiss the action."

Act. J. Dickson. *Alt.* Edw. M'Cormick.

Reporter, Dreghorn.