

1797. December 9.

ROBERT SCOTT *against* MARA ELLIOT, and her Husband for his interest.

CHARLOTTE ARMSTRONG, in 1760, prevailed before the Commissaries in a declarator of marriage, legitimacy, and divorce, against John Elliot, brought in her own name, and that of Mara Elliot, their infant daughter. The defender was likewise found liable in L. 10 a-year for the aliment of the latter, till she should attain pupillarity.

About this time John Elliot went to England, where he afterwards resided, till his death in 1786. He left some personal property there, which, in consequence of letters of administration from the Prerogative Court of Canterbury, was vested in Mara Elliot, who had always lived in Scotland.

Robert Scott, the second husband of Charlotte Armstrong brought an action against Mara Elliot, as representing her father, and her husband, for the sum awarded by the decree in 1760 for her aliment. The defenders, *inter alia*, objected, that as the only ground of action against Mara Elliot was her having administered to her deceased father in England, she could only be called to account in the courts of that country, where the defenders offered to appear in any action to be brought against them; 11th November 1796, Douglas, Heron, and Company against Grant's Trustees, No 108. p. 4602. They farther stated, that there was the more reason for sustaining the objection, that, from John Elliot's long residence in England, every claim against him, and consequently against his representatives, ought to be decided by its laws.

'THE LORD ORDINARY repelled the objection to the competency of the action.'

On advising a petition against this interlocutor, it was

Observed on the Bench; The judgment of the House of Lords, in the case of Douglas, Heron, and Company against Grant's Trustees, was not meant to alter the rule fixed by the case, Morison against Ker, No 107. p. 4601. but went on special circumstances, the trustees being chiefly resident in England, the trust-estate subject only to the law of that country, and a Chancery suit actually in dependence for the distribution of it.

THE LORDS unanimously refused the petition, without answers.

Lord Ordinary, *Craig*.
Clerk, *Home*.

For the Petitioner, *D. Douglas*. Alt. *Montgomery*.

D. D.

Fac. Col. No 50. p. 115.

*** See FOREIGN, Section 8.

No 55.
An English administrator residing in Scotland may be sued there.