

\* \* Durie reports the same case :

No 21.

Intromitter  
dwelt in ano-  
ther commis-  
sariot.

IN an action betwixt ————, the LORDS found a decret null, given against the defenders therein contained, pronounced by the Commissary of Glasgow, because it was given against them as intromitters with the defunct's gear ; which intromitters dwelt not within the bounds of his jurisdiction, and of the commissariot ; albeit it was *answered*, That the defunct died within his jurisdiction and commissariot, and that his testament was subject to be confirmed by him, and that the goods intromitted with by the defenders lay within his bounds, and were intromitted with by them there ; which was repelled by the LORDS, and the decret found null, because the persons who intromitted dwelt not within his bounds.

*Durie, p. 44.*

1624. *March 11.*

LAMB *against* HEATH.

No 22.

Action to affect heritable subjects belonging to an Englishman situated in Scotland, may be prosecuted in Scotland.

IN an action of improbation pursued by James Lamb against Letitia Heath, who was an Englishwoman born, and ever remaining in London, for improving of her right of a tenement of land in Edinburgh, whereto she claimed right by comprising and sasine ; the LORDS sustained this process against her, albeit she was a stranger born and bred, and dwelling ever in England, because the the subject of the action was for land within Scotland, whereto she claimed right, which could not be decided but by the Judges in Scots causes, and so *ratione rei* found that she was subject to the jurisdiction of this realm. The action here was real, but if it had been personal, they had not been Judges competent.

Act. *Nicolson & Lawrie.*

Alt. *Hope & Mowat.*

Clerk, *Scot.*

*Durie, p. 120.*

\* \* Haddington reports the same case :

JAMES LAMB pursued an action of reduction and improbation of certain bonds whereupon his lands in Edinburgh were comprised, and against the said comprising, and called also Letitia Heath, Englishwoman, upon threescore days warning. It was *excepted*, That no process could be granted against her ; because, being ane stranger born in England, and dwelling there from her birth, she was not a subject of Scotland, nor subject to the jurisdiction of any Judge within the same. It was *answered*, That she having right to land within the kingdom, which was sought to be impugned by a subject, the cause behoved

to be decided within the kingdom, and could not be judged by the law of any other kingdom; which reply the Lords sustained. No 22.

*Haddington, MS. No 3071.*

1626. November 15.

GALBREATH *against* CUNINGHAM.

No 23.

PROCESS was sustained by the Lords upon a bond granted in Ireland, after the Irish form, against a Scotsman, though he, with his family, had resided fourteen years, and were still residing in Ireland, and made denizens thereof; the pursuer having declared that he sought only execution against such lands and goods as the defender had in Scotland.

*Fol. Dic. v. 1. p. 327. Durie.*

\* \* See This case, No 2. p. 4430.

1626. December 8.

LO. BLANTYRE *against* FORSYTH.

No 24.

THE Lord Blantyre pursues James Forsyth for intromission with the monies of umquhile Patrick Mosman, debtor to the pursuer, to make the same forthcoming to him for his debt; this Mosman had fled out of Scotland to Rotterdam in Holland with some monies pertaining to the pursuer, where the said Mosman died; and before his death he delivered the monies to James Forsyth defender, resident then in Rotterdam, to be employed on his funerals, and other business concerning him. The defender therefore *alleged*, That he could not be convened here in Scotland for the alleged debt foresaid, because he, his wife and family, were actual residents in Rotterdam, where they had dwelt these ten years bygone, and yet remain there *animo remanendi*; likeas, the deed is libelled to be done in these foreign parts out of this country, and so *neque ratione rei, neque personæ* it is competent to the jurisdiction of the Lords. This allegiance was repelled, because the parties were all Scotsmen, but the LORDS sustained the process before them, to produce execution only against the defender's goods and lands which he had within Scotland, and no others.

A Scotsman residing in Holland *animo remanendi*, being pursued in Scotland, process was sustained against him, but only to produce execution against his goods in Scotland. The reverse of this was found, No 23. p. 4816.

*December 9.*—IN this abovementioned cause of the Lord Blantyre's, wherein he pursued by his summons, that it might be tried that Mosman intromitted with his monies, and fled therewith out of Scotland; and that Forsyth, defender, after his decease intromitted therewith, and with his goods and gear, and so should pay the money libelled to the pursuer; it was *alleged* for Forsyth, who was convened as intromitter with Mosman's goods and gear, that this action pursued against him as intromitter could not be sustained, until first sentence were recovered against the heirs or executors of umquhile Mosman, or some to repre-