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sent him, declaring the debt against him: and thereafter he might be convened as intromitter, and not till then; and, if he might be convened as intromitter, and the debt tried also against the defunct in one summons, yet some person, as representing the defunct, ought to be convened *hoc nomine*, seeing he is a stranger, and some other nearest of kin ought to be convened, against whom, the debt owing by the defunct, ought to be declared. This exception was repelled; and the Lords found, that both the debt owing by the defunct might be tried against this defender, and he also convened as intromitter with the defunct's goods in one summons by this same pursuit, and that there was no necessity of a preceding sentence against any representing the defunct, but that both might be tried in this same pursuit, albeit nothing was extant to constitute the defunct debtor to the pursuer of before; and also they found, that there needed no other person to be called to this pursuit to represent the defunct, seeing the defender, albeit a stranger, and dwelling out of the country, and also libelled to have intromitted out of the country, did in effect represent him, being convened as intromitter. See SERVICE AND CONFIRMATION.

Act. Lermouth.

Alt. Primerose.

Clerk, Scot.

Fol. Dic. v. 1. p. 327. Durie, p. 243, & 244.

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1627. July 3.

HEPBURN against MONTEITH.

A SCOTSMAN, residenter in another country, and remaining there *animo remanendi*, if he have goods or gear or lands in Scotland, he may be convened at a creditor's instance in Scotland.

Auchinleck, MS. p. 214.

1629. March 7.

WILKIE against MUIRHEAD.

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Although a defender in a process resided with his family in London: *animo remanendi*, and the pursuit was upon a contract executed in England, yet process was sustained against his person when he came to Scotland,

A PURSUIT at John Wilkie's instance, for payment of certain prices of victual sent by him to David Muirhead, was sustained against the said David, being pursued in Scotland, before the Lords of Session, albeit the defender's procurators *alleged*, That he could not be convened *in hoc foro*, seeing he and his family were actual dwellers and residenters at London, where they remained *animo remanendi*; likeas, the victual was English victual, and the pursuer then dwelt in Berwick, where he is burghess; and the writ for the bargain was made and dated at Berwick; whereby the defender *alleged*, That neither *ratione domicilii*, neque *rei de qua agitur*, neque *contractus*, he was subject to this judicatory; which allegiance was repelled, and the process in this judgment sustained against him, to have execution against his person when he came to Scot-

land, and against his goods and gear in Scotland, he being a Scotsman and factor to Scotsmen, and being summoned personally in Scotland.

Act. *Belsber.*

Alt. *Stuart.*

Clerk, *Gibson.*

Fol. Dic. v. 1. p. 327. Durie, p. 435.

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and against his goods there, he being a Scotsman, and personally summoned in Scotland.

* * Auchinleck reports the same case :

DAVID MUIRHEAD, factor in London, who had retired himself to England *animo remanendi*, is pursued by John Wilkie, for not selling of a loading of English wheat sent to the said factor to be sold in London, which he hath not done conform to direction, and thereby hath prejudged the said John in a great sum of money. It was *alleged*, That no process can be granted against the defender here in Scotland, seeing he was dwelling in England *animo remanendi*, and *res de qua agitur* is English wheat, and the direction was given in England. It was *answered* by the pursuer, That they were both Scotsmen, and the pursuer restricted the execution of his sentence only to be extended against goods and lands within the kingdom of Scotland; and that he was summoned, personally apprehended; and that his chief calling and stay was to be factor to Scotsmen. THE LORDS repelled the declinator of the judgment in respect of the reply, chiefly in respect of the restriction of the execution of the sentence against his goods in Scotland.

Auchinleck, MS. p. 215.

1685. November 28.

WILLIAMSON *against* HAIGIE.

ONE Williamson having obtained decret against Haigie, indweller in Perth, before the Bailies of Cupar, for removing from a dwelling-house in Cupar; which being suspended, because it was *a non suo iudice*, seeing the defender dwelt in St Johnston, and so was not subject to the jurisdiction of the Bailies of Cupar; and it being *answered*, That the process and sentence should be sustained, being for removing from a house within burgh, to the which the Magistrate of the burgh is sole and only Judge, albeit the party defender therein dwelt not within their liberty; seeing they had summoned defender, by virtue of the Lords letters, granting them warrant to summon the parties, albeit they dwelt not within their territories; for *ratione rei* they are Judges to them, and this is the inviolable custom within burgh, so to proceed in the like cases; and, in respect of the warrant foresaid of the Lords letters, and perpetual custom of the burgh, the decret ought to be sustained. And the other *answering*, That the Lords letters are impetrated *periculo petentis*, and cannot be a warrant to an act, which otherwise in law is reprobate; for, albeit *ratione rei*, the Magistrate *ubi res sita est* may be Judge; yet that holds in law only, when the

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Magistrates of towns and other inferior judges have jurisdiction *ratione rei sitae* as to the right of lands and houses within their bounds, tho' the defender dwell not within their jurisdiction, he being cited by letters of supplement granted by the Court of Session.