

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 decreet 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 decreet 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.

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party is deprehended within the territories of that Judge, and is not kept by the laws of this kingdom, where there is a sovereign and superior supreme judicatory, where such actions may be pleaded, and where all parties, within whatsoever subaltern judgment in the realm, may be both convened and sentenced; and, if this ground were maintained within burgh, then of the like reason outwith burghs in all sheriffdoms, one Sheriff may proceed against parties in other sheriffdoms not subject to his court, which were to confound all judgments, and greatly should prejudice parties; notwithstanding of all which, the decret was sustained, and the custom within burgh, and warrant of the Lords letters was allowed.

*Act. Morvat.**Alt. Barclay.**Fol. Dic. v. I. p. 327. Durie, p. 779.*

1639. March 23.

COL. BROG'S HEIR *against* _____.

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Found (the reverse of Blantyre against Forsyth, No 24. p. 4813.) that a Scotsman residing in Holland *animo remanendi*, may not be prosecuted here.

ONE being served and retoured heir to umquhile Colonel Brogs, who died in the Low Countries, and served there at the wars where he died, this Heir pursuing another Scotsman for delivery of the said Colonel's heirship goods, libelled to have been intromitted with by the defender in Holland, where the goods were then, the LORDS found, seeing the defunct lived and died in Holland, and that the goods were alleged to have been in Holland when the defunct died, and where they were intromitted with by the defender, as was libelled; and, that the defender was an actual residenter in Holland, where he was alleged to have intromitted with the same, and did reside there these many years of before, and ever sinsyne, and as yet he being there married, and an actual dweller there *animo remanendi*, albeit he was a Scotsman; that no process ought to be granted against him in this country for the said intromission, but that he ought to be pursued therefor in Holland, *quia actor debet sequi forum rei*; neither was it respected that the pursuer declared, that he insisted in this pursuit against the defender, being a Scotsman, that he may have execution against such of the defender's goods and estate as he had within Scotland, for satisfying of the heirship, as he should recover by this sentence, which the LORDS would not allow.

Fol. Dic. v. I. p. 327. Durie, p. 885.

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1642. February 1.

DOUGLAS *against* CUNNINGHAME.

JAMES DOUGLAS of Chester pursuing Sir David Cunninghame and George Muirhead, for payment of a sum of money, conform to an English bond, and they *alleging*, that they could not be convened in this kingdom to answer be-