No 107.
An English administrator, living in Scotland, may be sued here.

1790. *February* 25. COLIN MORISON and Others *against* JAMES KER.

ALEXANDER KER, having his residence in England, bequeathed the liferent of his estate, which consisted of moveables, to his sister Janet Ker, and, after her death, to his next lawful heir or heiress of blood.

Upon the testator's death, Janet Ker took out letters of administration in the prerogative court of Canterbury, and obtained possession of the whole effects.

Those effects Janet Ker delivered over to James Ker, who after her was one of the nearest of kin to Alexander Ker, and who also claimed to be his heir, if the destination in the will already mentioned should have the effect of excluding the nearest in kin.

Janet Ker having also died, James Ker, who had his residence in Scotland, was, as her representative, sued in the Court of Session by Colin Morison and others, claiming, as the nearest in kin of Alexander Ker, a rateable share of the effects left by him. In bar of this action, it was

Pleaded; A person to whom an office of trust is given by the judicial act of a particular court of law, is not obliged to render an account of his administration in any other. Least of all can he be compelled to defend himself against those suits that may be instituted in another country, where the nature of his office, and the rights resulting from it, cannot be understood or explained. This is exemplified in the case of a factor named by the Court of Session, who cannot be required to account but in that Court, and who surely could not be sued in England, if he should happen to be found there.

In the case of an English administrator, who is merely the officer appointed in the proper court for managing the moveable estate of a person deceased, this rule seems peculiarly applicable. In taking out letters of administration, the party and his sureties become bound to produce, in the prerogative-court, a just inventory of the effects which 'are to be distributed and disposed of in such 'manner and form as shall be limited by the direction of the Ordinary.' This obligation, it is evident, cannot be fulfilled but in the same prerogative court, from whence the letters of administration have issued; neither can the administrator, or his sureties, obtain a proper discharge elsewhere.

Thus the point has been repeatedly decided; and in the present case, where, owing to the peculiar construction of the will, it becomes a question, who are, by the law of England, entitled to the succession? to adopt a different rule would be exceedingly inexpedient. It may be said, that the administrator being dead, while those who have succeeded to her reside in Scotland, no effectual action could be instituted in the English courts. But as the defender is ready to appear in any action that may be brought against him in England, and as he is possessed of sufficient funds in that country, that circumstance does not seem to be of any importance. Harcarse, *voce* Executry; March 1684, Dryden *con-*

No 107. *tra* Elliot, *voce* FORUM COMPETENS; Burrough *contra* Grant, No 131. p. 2661; 22d November 1770, Blackstocks *contra* Mackay. *See* APPENDIX.

Answered; It is is a mistake to imagine, that an English administrator can only be sued in the prerogative-courts. His authority indeed is derived from thence, as that of a Scots executor is from the Commissaries; but this does not hinder him, any more than it does a Scots executor, from being sued in any of those judicatories where an ordinary action of debt could be brought against him.

If, after taking possession of the whole effects, a Scots executor were to retire to England, justice requires that the obligations he has come under to the creditors and nearest relations of the deceased should accompany him. In the same manner, where an English administrator brings the effects to Scotland, those for whom he is trustee must have a power of suing him here. Indeed it is more necessary in the latter case than in the former, there being no method in the law of England, by which an action can be instituted against a party who is not within the kingdom.

The decisions which have been resorted to must have been founded on specialities which do not here occur; or if they rest on a broader foundation, they are manifestly erroneous. As to the ambiguity of the words used by the testator, that can prove no obstacle to the interposition of the Scots courts, if they be not wholy incompetent, the judges in this country being in the daily use of deciding on the principles of a foreign law, where it is necessary for doing justice to the parties.

Several of the Judges, moved by the former decisions, were at first for dismissing the action. But the judgement of the Court sustaining the jurisdiction, was at length pronounced with considerable unanimity.

THE LORDS sustained the action.

Reporter, *Lord Alva*. Act. *J. W. Murray*. Alt. *Sollcitor-General, Fraser-Tytler*.
Clerk, *Gordon*.

Fol. Dic. v. 3. *p.* 230. *Fac. Col. No* 121. *p.* 233.

No 108. 1793. *November* 19.

Found, that an English administrator having a domicile in Scotland, might be sued in the courts of this country. This judgement was reversed on appeal.

DOUGLAS, HERON, and Company *against* The TRUSTEES of ANDREW GRANT.

MR BARON GRANT, on the 16th of May 1772, accepted two bills drawn on him by John Fordyce, payable 65 days after date.

The bills were indorsed to Douglas, Heron, and Company, by whom they were protested on the 23d July 1772, being the last day of grace.

A sequestration having by that time been awarded against Mr Fordyce, these bills were, in August 1772, produced for Douglas, Heron and Company, at a meeting of his creditors, as their grounds of debt.