

After hearing counsel, it was
 Ordered and adjudged that the interlocutors complained
 of be affirmed.

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 v.
 BRUCE.

For Appellants, *W. Grant, W. Adam.*

For Respondents, *Alex. Wight, Al. Maconochie, J. An-
 struther.*

[M. 4617.]

ELIZABETH BRUCE, and MARGARET BRUCE, }
 Daughters of the deceased DAVID BRUCE } *Appellants;*
 of Kinnaird, }
 JAMES BRUCE of Kinnaird, Esq., } *Respondent.*

House of Lords, 15th April 1790.

SUCCESSION—FOREIGN—LEX DOMICILII.—An officer in the East
 India Company's Service had made several remittances home,
 with the view of returning to his native country of Scotland.
 Remittances were on their way home, to the extent of £5708, and
 were on shipboard when he died in India. He left other estates
 in India worth £2198, and, together with other remittances to
 London, his whole personal estate amounted to £9000. James
 Bruce, the son of the first marriage, and brother consanguinean
 of Major Bruce, contended, that as the division of this intestate's
 personal estate must be regulated by the law of England, as the
lex domicilii, he was entitled to a share of the estate with the
 brothers and sisters of the full blood. Held, in the Court of Ses-
 sion, and affirmed in the House of Lords, that he was so entitled
 to claim.

David Bruce of Kinnaird, at his death, left issue by his
 first wife, a son, James Bruce, (who became the Abyssinian
 traveller), and William, Robert, Thomas, and two daughters,
 the appellants, Elizabeth and Margaret, by his second mar-
 riage.

William, the eldest of the second marriage, went to India,
 and having entered into the East India Company's service,
 attained the rank of Major, and acquired a fortune of
 £9000.

With the view of coming home to his native country, he
 had made various remittances to agents for his own behoof.

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In particular, he remitted in 1778 £1076. 5s. to London, but the person to whom it was remitted having died bankrupt, this sum was lost. Another remittance of £226. 11s. 1d. was made to a Mr. Conway in London, which was available for division. And £5708. 2s. 3d. Sterling was remitted to Mrs. Alexander and Messrs. Barclay and Low of Glasgow, with a power of attorney to those persons, and letters, directing them to lay out and invest the money at interest, on the best security, for his behoof, as they, or either of them, should think proper or expedient. The attorney is dated 24th Jan. The letter accompanying it bears the same date, and a subsequent letter of instructions bears 7th February.

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The bills for this sum, with the attorney and letters of instructions, were on shipboard, on their way to England, when Major Bruce died. They were drawn on the East India Company, and made payable at long dates *after sight*; but on arrival, and being presented, the Company refused to accept, unless four years were allowed for the two first, and five years for the other. This was done with the respondent's consent. The only other estate was that left in India at his death, administered to by his brother Robert, of which £1198. 17s. 10d. was remitted to Edinburgh, and £1000 more expected. The question then was as to the division of this personal estate between the brothers and sisters of the deceased. Whether it fell to be divided solely among the brothers and sisters of the second marriage (being of the full blood), according to the law of Scotland; or whether the respondent James Bruce, of the half blood, was entitled to any share, on the assumption that the deceased was domiciled in England, by the law of which, a brother *consanguinean* is entitled to share equally with brothers of the full blood.

He therefore brought an action against the surviving brothers and sisters, and also against the agents in Edinburgh and Glasgow, to whom these remittances were made, contending, that as the Major died by law, domiciled in England, where his effects were also situated at the time of his death, his estate fell to be divided according to the law of England, and concluding that, according to that law, he was entitled to a share with his other sisters and brothers. The defence stated to this action was, that the Major being a Scotsman, the law of Scotland must rule the division of his intestate succession, which excluded half blood.

The Lord Ordinary ordered memorials on the question, which the respondent stated to be simply :—Whether the law of England or the law of Scotland was to regulate the intestate succession of Major Bruce, a Scotsman, who died in India, domiciled there, and leaving his effects partly there and partly in England?—The respondent contended that formerly, it had been a controversy, where an intestate dies domiciled in one country, but his effects in another, whether the succession was to follow the law of the domicile or the law of the place where the effects were situated; but, in the present case, no such doubt could arise, as Major Bruce was domiciled in India at the time of his death; part of his estate was there, and part in England, and consequently both the *forum domicilii* and the *lex loci rei sitæ* concur in supporting his claim.

The appellants, on the other hand, admitted that the *lex loci rei sitæ* must govern as to that part of the estate still in India at the time of his death; but, in reference to the £5708, remitted by the three bills, and which was then on shipboard on its way to this country, they maintained that it was divisible according to the law of Scotland, to which country it was destined to be invested in securities, and to which the deceased himself purposed to return.

The Lord Ordinary (Monboddo) pronounced this interlocutor.—“ Finds, 1. That Major Bruce was in the service
 “ of the East India Company, and not in a regiment on the
 “ British Establishment, which might have been in India
 “ only occasionally, and as he was not upon his way to Scot-
 “ land, nor had declared any fixed and settled intention to
 “ return thither at any particular time, India must be con-
 “ sidered as the place of his domicile. 2. That as all his ef-
 “ fects were either in *India*, or in the hands of the East
 “ India Company, or of others, his debtors in England,
 “ though he had granted letters of attorney to some of his
 “ friends in Scotland, empowering them to uplift those
 “ debts, his *res sitæ* must be considered to be in England:
 “ Therefore finds, That the English law must be the rule in
 “ this case, for determining the succession of Major Bruce,
 “ and consequently that James Bruce of Kinnaird is entitled
 “ to succeed with the defenders, brothers and sisters, con-
 “ sanguinean and decerns.” And, on reclaiming petition,
 the Court adhered.

Dec. 7, 1787.

July 1, 1788.

Against these interlocutors the present appeal was brought.

Pleaded for the Appellants.—Major Bruce’s domicile was

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in Scotland. Domicile, in the legal sense, is a word of very different import from residence or habitation, because ambassadors, envoys, exiles, do not lose their domicile although they reside in a foreign country. Mere length of time or mere residence in a place, does not therefore *per se* constitute domicile. Three rules are invariable; 1. Every man has a domicile in his native country, until he acquires another; 2. That he can acquire another only by establishing himself there, *animo remanendi*; and, 3. That however long a party may reside abroad in certain capacities, still his domicile remains at home in his native country, to which he belongs, where he was born, and to which it is reasonable to presume he has always an intention of returning, although the time of doing so be undetermined.—Major Bruce was born in Scotland, and all Scotsmen abroad, who have no intention permanently to remain there, but who have a constant intention of returning to their native country, are domiciled Scotsmen; and it makes no difference in the intention, that the day or term of returning may not be fixed, because the intention of returning may be as positive in the one case as the other. Nor is it material to this intention, that Major Bruce was not a British officer, in the service of the Crown, because the East India Company is a British Company, incorporated by charter from the British Crown—the possessions in India are British—and as much a part of Scotland as England, the term “Britain” comprehending both countries. When a Briton enters into foreign service, such as French or Prussian, this presumes an abandonment of his country and his domicile; but the same cannot hold, where a Briton enters into the East India Company’s service, which is a British Company, and a British possession, under the allegiance and dominion of the British Crown. Major Bruce had expressed his intention of returning in the letters adduced, although the precise time was not fixed. He had, in furtherance of this intention, transmitted the £5780 to Scotland, which was the strongest evidence of his intention to return to his native country; and, by the law of Scotland, therefore, his estate fell to be distributed among his brothers and sisters of the full blood.

Pleaded for the Respondent.—1. By the various decisions of the Court of Session, it has been established, that the personal property of an intestate, must be distributed according to the law of the place in which such property is situated; and as the property of Major Bruce was part in India,

and the other part in England, at least must be so held, as being due to an intestate resident in India, and payable by a trading company resident in England, such property must be considered, in the eye of law, as situated either in England or India, and therefore distributable, in either case, according to the law of England. 2. The circumstances of the present case prove that Major Bruce was domiciled in a country subject to the laws of England, and therefore the respondent was entitled to participate in a share of the succession, whether the *lex domicilii*, or the *lex loci rei sitæ* is adopted as the rule of succession; because by the laws of England the half blood is entitled to a share along with the full blood.

After hearing counsel,

LORD CHANCELLOR THURLOW stated :—

“ MY LORDS,

“ As I have no doubt that the decree ought to be affirmed, I would not have troubled your Lordships by delivering my reasons, had it not been pressed, with some anxiety, from the bar, that if there was to be an affirmance, the grounds of the determination should be stated, to prevent its being understood that the whole doctrine laid down by the interlocutor appealed from, and particularly that on which it was said the judges of the Court of Session proceeded, principally in this, and former cases similar to it, had the sanction of this House. It had been urged, that the judgment should contain a declaration of what was the law, and he had resolved in his own mind, whether that would be expedient. It was not usual in this House, or in the courts of law, to decide more than the very case before them; and he had particular reluctance to go further in the present case; because, as had been stated with great propriety by one of the respondent's counsel (Mr. Hope), various cases had been decided in Scotland, upon principles which, if this House were to condemn, a pretext might be afforded to disturb matters long at rest.

“ But I have no objection to declare what were the grounds of my own opinion, and how far it coincided with the rules laid down by the Court below.—Two reasons were assigned for having declared that the distribution of Major Bruce's personal estate ought to be according to the law of England; First, That India, a country subject to that law, was to be held as the place of his *domicilium*, and certain circumstances, from which that was inferred, were adduced. These he considered only as circumstances in the case; that is, though these had been wanting, the same conclusion might have been inferred from other circumstances. In his mind, the whole circumstances of Major Bruce's life led to the same conclusion.—The

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second reason assigned by the interlocutor was, that the property of the deceased, which was the subject of distribution, was, at the time of his death, in India or in England. As to this, he founded so little on it, that he professed he could not see how the property could be considered as in England; it consisted of debts owing to the deceased, or money in bills of exchange drawn on the India Company. Debts have *no situs*; they follow the person of the creditor; that proposition, therefore, in the interlocutor fails in fact.

“ But the true ground upon which the cause turned was, the deceased being domiciled in India. He was born in Scotland; but he had no property there. A person’s origin, in a question of, Where is his domicile? is to be reckoned as but one circumstance in evidence, which may aid other circumstances; but it is an erroneous proposition, that a person is to be held domiciled where he drew his first breath, without adding something more unequivocal. A person being at a place is *prima facie* evidence that he is domiciled at that place; and it lies on those who say otherwise to rebut that evidence. It may be rebutted, no doubt a person may be travelling;—on a visit; he may be there for a time, on account of health or business; a soldier may be ordered to Flanders, and may be detained for many months;—the case of ambassadors, &c.; and what will make a person’s domicile or home in contradistinction to these cases, must occur to every one. A British man settles as a merchant abroad;—he enjoys the privileges of the place—he may mean to return when he has made his fortune; but if he die in the interval, will it be maintained that he had his domicile at home? In this case, Major Bruce left Scotland in his early years; he went to India; returned to England, and remained there for two years, without so much as visiting Scotland, and then went to India, and lived there sixteen years, and died. He meant to return to his native country, it is said, and let it be granted: he then meant to change his domicile, but he died before actually changing it. These were the grounds of his opinion, though he would move a simple affirmance of the decree; but he would not hesitate, as from himself, to lay down for law generally, that personal property follows the person of the owner; and, in case of his decease, must go according to the law of the country where he had his domicile; for the actual *situs* of the goods has no influence. He observed, that some of the best writers in Scotland lay down this to be the law of that country, and he quoted Mr. Erskine’s Institute as directly in point. In one case, it was clearly so decided in the Court of Session; in the other cases, which had been relied on as favouring the doctrine of *lex loci rei sitæ*, he thought he saw ingredients which might make the Court, as in the present case, join both *domicilium* and *situs*. But, to say that the *lex loci rei sitæ* is to govern, though the *domicilium* of the deceased be without contradiction in a different country, is a gross mis-

application of the rules of the civil law, and *jus gentium*, though the law of Scotland on this point is asserted to be founded on them."

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It was therefore ordered and adjudged that the interlocutors complained of be, and the same are hereby affirmed.

For Appellants, *Sir J. Scott, W. Alexander.*

For Respondent, *Ilay Campbell, Chas. Hope, J. Campbell.*

NOTE: *Appellant's Authorities, (Scottish).*—Henderson's Children, Durie, fol. 88; Schaw v. Lewins, 1 Stair's Decisions, fol. 252; Brown and Duff v. Bizot, 1 Stair and Dirleton's Decisions, 29 July 1666; Brown v. Brown, Lord Kilkerran, *voce* Foreign, Falconer, 24th November 1744; Morrison and Others v. Earl of Sutherland, Lord Kilkerran *voce* Foreign, June 1749; Davidson v. Elcherson, Fac. Coll. 13th January 1778; M'Lean v. Henderson, *Eodem die.*

Foreign Authorities.—Vattel, a French Jurist, Liv. II. cap. 8, § 100.

Denisart, *voce* Domicile, § 3-4.

Civil Law.—Voet. Comment. ad Pandect, lib. 38, t. 17, § 34.

Vinnius, Quest. sel. lib. 2, c. 19.

Dutch Law.—Van Leuwen, Censura Forensis, lib. 3, 6, 12, § ult.

Huber. Prælectiones Juris Civilis et Hodierni, pars. 1, lib. 3, tit. 13, § 21; pars. 2, lib. 1, tit. 3, § 15.

English Authorities.—Thorne v. Watkins, 2 Vez. 35.—Kilpatrick v. Kilpatrick, Rolls, 27th July 1787; Burne v. Cole, 7th April 1763; 3 Haggard's Eccles. Rep. p. 462.

[Mor. p. 8769.]

SIR WM. FORBES, Bart., GEORGE SKENE
and Others, Freeholders of the County
of Aberdeen, } *Appellants;*

SIR JOHN MACPHERSON, Bart., } *Respondent.*

House of Lords, 19th April 1790.

ELECTION—VOTING—QUALIFICATION.—The Duke of Gordon granted a liferent superiority to Sir John Macpherson, then residing in India, and, under this title, his agents claimed to have him enrolled on the roll of freeholders. The statutory oath, devised to detect nominal and fictitious qualifications, was not put; but an objection was stated to his being put upon the roll, on the ground that his