

S E C T. III.

Intromission.

1619. *July 1.* LORD DINGWAL *against* VANDOSME.

My Lord pursues Frances Vandosme, as universal intromitter with the goods of umquhile Erasmus Dury her spouse, to pay his debt. *Excepted*, any intromission she had was necessary, viz. household-gear, which she condescends on, which she could not cast furth; and the pursuer must condescend on her further intromission, for if it be of goods meddled with by her in England, quhilk she grants not, she can be liable only to restitution, by the custom of England. *Replied*, Meddled with mail in Scotland and England, and condescends. THE LORDS find that part of the exception relevant, bearing that her intromission in England can only produce restitution, she always proving the custom in England, which they admit to her probation; and also find the reply relevant, and admit it with the points of the summons to the pursuer's probation; and declare, albeit the pursuer prove that part of his reply of her intromission in England, yet that shall infer only restitution, she always proving the custom, and for proving of the summons and reply for the intromission within Scotland assigns the 26th July instant; and likewise, grants commission to Mr Thomas Johnston, and Mr Adam Newton, to receive and examine any witnesses, to be produced before them by the pursuer, for proving the English intromission, and by the defender for proving the custom; and that any day betwixt the 15th day of October and the 24th thereof; and to report the 20th November.

Clerk, *Durie*.*Fol. Dic. v. 1. p. 318. Nicolson, No 168. p. 120.*1683. *March.* ARCHBISHOP of GLASGOW *against* STEPHEN BRUNTSFIELD.

INTROMISSION with goods in England, or foreign places, belonging to a Scotsman, who died in Scotland, without confirmation here, made no passive title, but only found to be a ground to make the intromitter liable *in valorem*, if not exhausted *aliunde*.

Found that executors in Scotland need not confirm debts in England, or foreign parts, due to the defunct, seeing confirmation here would give them no

No 15.
Intromission
in a foreign
country with
the effects of
a defunct
Scotsman,
will not infer
vitious intro-
mission.

No 16.

- No 16. title to such goods ; albeit it was *alleged*, that *mobilia sequuntur personam*, and executors find caution, which would be of advantage to creditors.
Fol. Dic. v. 1. p. 318. Harcarse, (AIRE.) No 41. p. 9. (EXECUTRY.) No 453. p. 124.

DIVISION. III.

Of transactions in a Foreign Country, meant to take Effect in Scotland.

1664. December 8. SCOT in Carlisle *against* HENDERSON and WILSON.

No 17.

A bond was granted by a Scotsman in England, to an Englishman, and registered in Scotland. It was found incompetent to prove by witnesses, that any part of it was paid, though such proof is allowed in England.

RICHARD SCOT having charged Henderson and Wilson upon their bonds, they suspend, and offer them to prove payment of a part, by witnesses, and *allege* that it being the law of England, that witnesses can prove to take away writ, that therefore these bonds being contracted in England, with Englishmen, the suspenders ought to have the same benefit of probation, they would have had, if they had been arrested in England, upon their bonds, or pursued there, and adduced a practick of Durie, in *anno* 1628.

THE LORDS having accurately considered and debated this case among themselves, and finding that *locus contractus*, was in England, but the bonds bore expressly a clause of registration in Scotland ; and that such bonds had been ordinary betwixt merchants in England, and merchants in Scotland ; and in no time such a probation admitted ; and that it would furnish an ordinary delay in such cases, to the disadvantage of merchants, and hindering of trade, by always offering to prove payment in England, by witnesses, which could require long time,

Therefore, they found the reason only probable, *scripto vel juramento*.

Fol. Dic. v. 1. p. 318. Stair, v. 1. p. 236.

* * * Newbyth reports the same case :

RICHARD SCOT, Englishman of Carlisle, pursues two of his debtors in Scotland, for the sum of L. 824 Sterling, conform to their bond subscribed at Carlisle, the time of the dispute. It was *alleged* by the defenders, That they offered them to prove by famous witnesses, that they paid a considerable part of the same in England to the pursuer himself, or others in his name, and which, they contended, ought to be received in this case, the debt being owing to an