

No 31. *ratione originis, seu domicilii, vel loci contractus, delicti, vel ratione rei sitæ*; but it is not sufficient, that because you are infest in lands lying within such a shire; therefore you must answer as to any action relating to these lands before the Sheriff of that shire; though you dwell without his territory. But here the first act of Parliament being before the institution of the College of Justice, the Sheriff seems to be made Judge competent to such actions privative of all others. On the other hand, the Lords considered the fiar had suffered this to lie over for thirty years, and now pursued her to repair, (so cognition must first be taken in what condition she received them at her entry to her life-rent;) therefore they advocated the cause from the Sheriff to themselves, though the Sheriff *in prima instantia* is certainly competent thereto, if the defender dwelt within his jurisdiction.

*Fol. Dic. v. 1. p. 328. Fountainball, v. 1. p. 784.*

December 29.

JOHN HALDANE, Esq; Collector of his Majesty's Customs at Prestonpans *against*  
The YORK-BUILDING COMPANY.

No 32.

In an action at the instance of a Scotsman against the York-Building Company, the defenders objected to the competency of the jurisdiction. The Lord's, in respect of the Company's having an estate in Scotland, repelle the objection.

MR HALDANE having borrowed L. 3000 Sterling from the York-Building Company, and as a security deposited with them L. 6000 Sterling of their own capital stock; he made an agreement with the Company about the time the L. 3000 became payable, that if that sum should be paid in Scotland, such payment should be accepted in discharge of the above mentioned security. A bill was in consequence of this agreement accepted by Mr Haldane, and duly paid to the Company's managers in Scotland; but the Company not having transferred the L. 6000 capital stock to Mr Haldane or his trustee, he brought an action before the Court of Session against the Governor, Directors, Managers, and Assistants of the said Company for the value of the said L. 6000 capital.

The defenders *excepted* to the competency of the Court, upon the following grounds.

1<sup>mo</sup>, That they did not reside within the territories of the jurisdiction of the Court of Session, but at London, and were thereby subjected to the Courts of England, according to the rule, *actor sequitur forum rei*.

2<sup>do</sup>, Since the pursuer in this case was insisting for a transference to a share of the Company's stock, this by their rules could not be done but in their books; and therefore it ought to be craved only in that place where these were.

3<sup>ti</sup>, The defenders being pursued as administrators to a Company, they were not obliged to answer but in the place where the administration was committed to them, as in the case of tutors, executors, and others entrusted to offices;

and they adduced a late decision, the Marchioness of Annandale against her Husband's Creditors\*.

No 32.

It was *answered* by the pursuer, to the *first*, That the Company's acts and contracts are as effectual in Scotland as in England : The agents authorised by the directors treat for and in behalf of the Company in Scotland, and have a proper office there ; the Company have purchased a considerable property in Scotland, and thereby are become vassals mediate or immediate of the Crown, and in consequence convenable before the Courts in Scotland, wherever they may happen to reside, and that whether the question immediately concerns their estate in Scotland or not ; otherwise no debt contracted by the Company in England could be recovered upon their estate in Scotland, since decrees in England are no manner of foundation for adjudications, arrestment, or pouding in Scotland.

To the *second* it was *answered*, That the action was not for delivery of stock, but damages for not delivery, which are prestable here ; and though the action were for delivery, yet it might be executed in England, by transferring in the books according to the decree given.

It was *answered* to the *third*, That the Company were pursued, and as a body corporate, in point of suing or being sued, have the same capacity as any person in the realm, and so daily sue and are sued here. As to the case of the Marchioness of Annandale, she was convened as administratrix of a subject of moveables, for which she could only be exonerated in the court where she had found caution to be accountable.

THE LORDS sustained process at the pursuer's instance.

Reporter, Lord Pollock. Act. Dun. Forbes, & Ro. Craigie. Alt. J. Boswell & Will. Grant.  
Fol. Dic. v. 3. p. 239. Edgar, p. 137.

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1737. November 18.

SIR HUGH DALRYMPLE of North-Berwick against ALEXANDER ROSS Solicitor in London.

No 33.

A PROMISSARY note of L. 200 alleged accepted by a Scots gentleman when abroad, being sent to this country, and payment demanded, the gentleman, by a summary application setting forth, that the person in whose hands it was, and who made the demand, was a London attorney, and about to leave the country, obtained the promissary note to be sequestrated as a forged deed, and thereafter went on in an improbation. Sometime thereafter the attorney made an application to the Court of Session to have the note restored, *alleging*, That he had given his obligation to restore the note, or pay the contents ; and the LORDS, in respect the creditor in the note was not subject to the jurisdiction of thi

\* See General List of Names.