

S E C T. II.

Testament made by a Bastard.—Nuncupative Wills.

1611. February 1. PURVES against CHISHOLM.

No 46.

A SCOTSMAN, born bastard, dying in England, his goods will fall under escheat to the King, and his donatar will have right thereto, notwithstanding any testament alleged made by the bastard, and confirmed in England, and that though bastards be alleged to have *testamenti factionem* there; specially if it be offered to be proven, that the bastard has rents, resort and traffick in this country, as a Scotman, and not as an Englishman naturalized, or made denizen.

Fol. Dic. v. 1. p. 320. Haddington, MS. No 2140.

1665. January 19. SHAW against LEWIS.

No 47.

A nuncupative will, made in England, though good by the *lex loci*, was not sustained to carry moveables in Scotland.

WILLIAM SHAW, being a factor at London, and dying there, and having means both in England and Scotland, there falls a competition betwixt his executors nuncupative in England, and his nearest of kin, executors in Scotland. Anna Lewis, executrix confirmed in England; produces a sentence of the Court of Probates of Wills in England, bearing, 'That upon the examination of witnesses, that Court found, that William Shaw did nominate Anna Lewis his executrix, and universal legatrix.' And that being asked by her, what he would leave to his friends in Scotland? He declared he would leave her all, and them nothing, because they had dealt unnaturally with him.—It was *alleged* for the defunct's cousins, executors confirmed in Scotland, That they ought to be preferred, because, as to the defunct's means and moveables in Scotland, the same must be regulated according to the law in Scotland, where a nuncupative testament hath no use at all; and albeit a legacy may be left by word, yet it cannot exceed L. 100 Scots.—It was *answered*, That as to the succession, the law of Scotland must regulate; so that what is heritable cannot be left by testament, though made out of Scotland; as was found in the case of the successors of Col. Henderson dying in Holland, No 40. p. 448.1.; and Melvil *contra* Drummond, No 41. p. 4483.; yet as to the solemnity of acts to the law, and custom of the place, where such acts are done, takes place, as where an act is done in Scotland, albeit it be only probable, by writ or oath of parties; yet being done in England, it is probable by witnesses, though it were of the greatest moment; and though the law of Scotland, in writs of importance, requires the subscrip-