

## F O R E I G N E R.

## S E C T. I.

## Whether Foreigners can hold Lands in Scotland.

1683. *March.*The CREDITORS of the LORD KINCARDINE *against* HEERE VAN SOMMERDYKE.

**I**N the ranking of the Creditors of the Lord Kincardine, it was *alleged*, That an infestment of annualrent granted in favours of Heere Van Sommerdyke, could not be respected, because he was a stranger not naturalized, and so not capable to acquire a feu in Scotland.

*Answered* for Heere Van Sommerdyke ; That his lady being a Frenchwoman, and himself a subject of France, where he hath a marquisate, and lives frequently with his family, he had the benefit of the general act of naturalization granted to the subjects of France in Queen Mary's time. *2dly*, This is not an infestment of property, but of annualrent, which is but a servitude. *3dly*, If strangers not naturalized were not allowed to acquire rights in Scotland, then all our commerce with these would cease, seeing they are oft-times put to apprise or adjudge their debtor's lands for satisfaction of their debts.

*Replied*, Strangers have an easy remedy by procuring naturalization ; and if a stranger died, the retour could not bear him to have died *ad fidem domini regis*, (which is a point of the brief) seeing a stranger is under no fidelity ; and seeing the subjects of this kingdom are not capable to purchase in France, unless they be denized, no more ought the French be capable here, nor is this party properly a Frenchman ; so that it were *fictio fictionis* to allow him the privilege of a French subject.

THE LORDS demurred to give answer to the point ; but allowed the stranger's right to be ranked in its own place, that he might intromit with the annualrents upon caution, till the point was decided. But here it was controverted if Scotsmen were capable to purchase in France without being naturalized there.

*Fol. Dic. v. I. p. 324. Harcarse, (INFESTMENT.) No 595. p. 164.*

## No 1.

In a ranking and sale, it was objected to an infestment of annualrent in favour of a foreigner, that he not being naturalized could not acquire a feu in Scotland. No decision was given upon this point ; but the claimant was allowed to be ranked, and to intromit with the annualrents, upon caution, till the case was decided.