

FORUM COMPETENS.

DIVISION I.

Forum Competens Ratione Originis.

1747. *July.* ANDERSON *against* HODGSON and ORMISTON.

HODGSON and Ormiston of Newcastle, being creditors to Anderson shop-keeper in Kelso, applied, by their doer in Scotland, to Mr Home of Wedderburn, Sheriff-depute of Berwick, and represented that Anderson was dissipating his effects in order to disappoint their payment, and therefore craved a warrant to secure his effects, and to have them sold by roup, and the price applied for their payment; which request the Sheriff-depute was pleased to comply with, and Anderson's effects were summarily seized and sold, &c.

Anderson brought a process of oppression and damages before the Lords against the Sheriff-depute, and against Hodgson and Ormiston, which the Sheriff thought proper to compromise with the pursuer so far as it related to him. For Hodgson and Ormiston, a declinator was proponed to the jurisdiction of the Court, in respect they were neither natives of Scotland, nor had effects in it: But it being discovered that Ormiston had been born in Scotland, though he had now for a long time resided in England, the pursuer insisted that he was subject to the jurisdiction of the Court *ratione originis*; and pleaded the decision Muirhead *contra* Wilkie, No 26. p. 4814., where, in a process against Muirhead for certain prices of victual sent to him by Wilkie, notwithstanding its being alleged, that he could not be convened *in hoc foro*, seeing he and his family were actual residents in London *animo remanendi*, and that the writing for the bargain was dated at Berwick, where he, the defender, then resided, process was sustained against him, to have execution against his person when he came to Scotland, and against his goods and gear in Scotland, he being a Scotsman, and factor to Scotsmen, and being summoned personally in Scotland; and to the like purpose, Lord Blantyre *contra* Forsyth, No 24. p. 4813.

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Two English merchants having obtained a warrant of sale of the effects of a Scots debtor, the debtor brought an action of oppression and damages against the judge who granted the warrant, and the creditors, upon the ground that the warrant being summary was illegal. It was objected for the creditors, that they were not natives of Scotland, and they therefore declined the jurisdiction of the Court. It was afterwards discovered that

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one of the creditors had been born in Scotland, though he had resided all his life in England. The Lords repelled the objection, chiefly upon the *ratio* that the ground of debt had its rise in Scotland.

Answered for the defender; That it would be unreasonable to sustain a *forum ratione originis*: Suppose a person to be carried out of the country wherein he was born, while an infant, Why should the circumstance of his having been born in that country subject him to the judicatories of it, when he can no more be supposed acquainted with the laws and customs of it, than of any other country in Europe? He likewise opposed the decision, Heir of Colonel Brogs *contra* —, No 28. p. 4816., where the Lords refused process against a defender residing in Holland, *animo remanendi*, to account for intromissions had by him in Holland, although he was a native of Scotland, and that the pursuer declared that he insisted in the action, only that he might have execution against such of the defender's goods as he had within Scotland.

The point appearing not to be clearly settled in our practice, the Ordinary stated the question verbally to the Lords; when the opinion of the Court was, that the Ordinary should sustain the *forum ratione originis*; and the *ratio decidendi* was, that in this case the ground of action had its rise in Scotland.

For the Lords were pretty much agreed, that had the ground of action been a fact committed, or contract entered into out of Scotland, it would not have been enough to subject the defender to the jurisdiction of this Court, that he had been born in Scotland.

(*Fol. Dic. v. 3. p. 237. Kilkerran, (FORUM COMPETENS.) No 3. p. 214.*)

1760. June 27.

ROBERT HOG Merchant in Campvere, *against* SMART TENNENT, Merchant in Campvere.

No 2.

The jurisdiction of the Court of Session over the natives of Scotland residing at Campvere, *ratione originis*, not excluded by that of the Conservator.

ROBERT HOG, a member of the Scots factory at Campvere, and who had for many years resided there, brought an action against Smart Tennant, another member of that factory, concluding, *imo*, For payment of the balance of an account current between them; *2do*, For the contents of a bill drawn by a merchant in Leith upon Tennent, payable to Hog; and, *3tio*, For damages in respect of Tennent's having injured Hog in his trade, by defaming his character, and having insulted and beat him.

The defender *objected* to the jurisdiction of the Court of Session to try this cause, at least in the first instance, in respect of both parties being residents in Campvere, and subject to the jurisdiction of the conservator-court there; which he alleged was privative of the jurisdiction of the Court of Session.

Pleaded for the defender; By the 81st act of King James IV. Parl. 6. the Conservator's jurisdiction was established over the Scots merchants at the staple port; and the act appears to have been made soon after the staple contract was entered into between the Royal Burghs and the Magistrates of Campvere; which shows, that it must have been specially intended for the benefit of the members.