

1756. *July 16.* HEIR OF KINMINITY *against* THE CREDITORS.

THE LORDS, in this case, unanimously determined, that if an apparent heir for three years possessed lands, in the right of his apparency, or if another possessed them by a right derived from him, these lands were liable to his debts, although it might be true that another had a better right to them,—as, for example, that the widow liferented them, and so might have turned the heir out of possession of them, which was the case here; for the Lords were of opinion that all that the statute required was possession as apparent heir, but it did not require that nobody else should have a better title.

1756. *November 16.* COMPETITION of the CREDITORS upon the FORFEITED ESTATE of NAIRNE.

[*Fac. Coll.* No. 216.]

It was objected to the execution of an inhibition, that it bore “that the messenger left and affixed in the lock-hole of the door, after he had made six several knocks upon the said door, a copy of the letters, because he could not personally apprehend the party.”

The President and Lord Justice-Clerk were for sustaining the objection, because, they said, it confounded two kinds of execution which were quite distinct in our law: the first was, when the messenger was admitted, and left a copy with the wife or servants; the second was, when he was denied entrance, and afterwards affixed a copy to the door: because this execution did not bear that the messenger had not been admitted. But Prestongrange said, that the giving the six knocks at the door, and affixing the copy, implied that he had not been admitted, and therefore it was an execution of the last kind. And with him agreed the majority.

1756. *November 23.* FORBES *against* LADY STRATHMORE.

[*Elch.* No. 9, *Proof.*]

IN this case, which was a declarator of marriage against the lady, the President gave it as his opinion, that if a marriage was made in a foreign country, in such a way as to be a valid marriage by the law of Scotland, though not by the law of the country where it was celebrated, it will be, to all intents and purposes, a good marriage in Scotland.

In this case the marriage was said to have been clandestinely made in Hol-

land, without proclamation of banns, or the parties acknowledging, before a magistrate, that they were married persons; which, by the law of that country, is a null marriage. This marriage, nevertheless, the President said was a good marriage in Scotland, in the same manner as a testament made in Friesland, with only two witnesses, where the law of the country requires seven, would be a good testament in Scotland. And with him agreed the rest of the Lords. He further said, that nothing more was wanted to make a marriage, by the law of Scotland, but the deliberate consent of parties; and if that was fully proved, though no *copula* followed, it was a marriage. *Vide* 29th June 1756, *Malcolm*.

*N.B.* The rule laid down by the President, with respect to marriage, will extend to all contracts; so that the rule of the *lex loci*, in contracts, comes to this, That a contract made in a foreign country is valid two ways,—if it be made according to the laws of the country where the parties were at the time of contracting, or if it be made according to the laws of the country in which it is sued upon. This rule, therefore, of the *lex loci* may support contracts that are not made according to the laws of the country where execution is demanded upon them, but can never destroy contracts that are made according to the laws of that country.

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1756. December 21. DAVID SCOT of SCOTSTARVET *against* ———.

A LADY, having a right of liferent over an estate, purchased in some debts affecting that estate: the question was, Whether prescription of such debts could run during the lady's possession upon her liferent? And the Lords unanimously found, That it could not, and that it was not necessary for a creditor, in such a case, to assign his debts, in order to have process sued upon them, or to raise a reduction and improbation of all other rights that might interfere with them, or to take any document whatever upon them. This they determined upon the general principle, that a man, having several rights in his person, may ascribe his possession to any one of them, and prescription will not run against the rest, though they cannot be taken up separately by any heir or creditor, but must follow the right upon which the party chooses to possess; as was found in the case of *Creditors of Easterfearn*, in November 1751.

The case of *Pitrichie* was quoted here, where, the President said, the point was established.

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