

1740.

FULLERTON  
v.  
KINLOCH.

WILLIAM FULLERTON, *et alii*, Appellants;  
DAVID KINLOCH, Respondent.

13th Feb. 1740.

FOREIGN.—SUCCESSION.—HEIR AND EXECUTOR.—A simple contract debt incurred in England, though in that country not affecting the heir of the debtor, may be the ground of affecting his landed estate in Scotland.

COSTS.—L.100 given to respondent.

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[Clerk Home, No. 125. Elchies *voce* Succession, No. 6. Fol. Dict. I. p. 319. Mor. Dict. p. 4456. Brown's Supp. V. p. 670.]

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William Fullerton, a Scotsman by birth, died No. 52. domiciled in London, after having contracted debts there, consisting principally of the contents of a promissory note for L.100, and some debts on account. These debts were assigned to the respondent, Mr. Kinloch, who brought an action against Fullerton's children for payment, and charged the eldest son, (the appellant,) to enter heir to his father, to an heritable bond in Scotland for L.4000.

The heir, *inter alia*, pleaded, that the debts were contracted in England, where simple contract debts do not affect the heir or heritage, unless expressly mentioned, but only the executor and personal estate; and, therefore, that they could not affect the heir or estate in Scotland, for that the question must be decided by the *lex loci contractus*.

*Answered.*—It is of no importance what may

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be the law of England, for it is the law of Scotland, which must be the rule. By this law, all debts, wherever contracted, may, by the diligence of the law, be made to affect both the real and personal estate, the heirs having relief according to the nature of the several debts and estates. And by the known maxims of law, not only succession to lands, but competitions between rights and incumbrances upon lands, are to be determined *secundum legem loci*, where the subject is situated, this being the only rule in the Court, from which decrees concerning such real estate can receive execution.

The Lord Ordinary (Elchies) repelled the defence, and sustained the claim of the respondent, (Dec. 8, 1738,) and the Court adhered, (July 1739.)

The appeal was brought from these interlocutors.

After hearing counsel, “ It is ordered and adjudged that the interlocutor complained of be affirmed, and that the appellants do pay to the respondent the sum of L.100 for costs in respect of the said appeal.”

For Appellants, *W. Noel, J. Erskine.*

For Respondent, *Ch. Areskine, W. Murray.*

Entered  
Nov. 23,  
1739.

Judgment,  
Feb. 13, 1740.