

S E C T. III.

Testaments confirmed in England.

1627. February 16. LAWSON *against* KELLO.

IN an action at the instance of Lawson English woman against Bartol Kello, for payment of a sum contained in an English bond, made by the defender to the pursuer's umquhile husband who was citizen of London, and which the pursuer claimed, as executrix nominated to her husband, by a testament confirmed in London, the LORDS sustained the action at the instance of the said executrix, and her procurators constituted by her, to pursue upon that bond and testament, albeit there was no special inventory given up, nor contained in the said testament, the pursuer proving that the form of England was to confirm testaments in that manner, and that the same would furnish actions to the executors of the defunct against their debtors, albeit no special inventory, nor particular mention of the debt-acclaimed were in that testament; the pursuer showing the bond to qualify the debt, and that she was confirmed executrix to the defunct; which the LORDS found sufficient, this being proven, or otherwise they sustained the pursuit, the pursuer finding caution to warrant the defender of this debt at all hands, who might claim the same from him, the option of the which two, viz. either to prove the custom, or to find the caution they gave to the pursuer, and that one of them should suffice to sustain the action; and this English testament was sustained to produce this action at an English woman's instance in this realm; albeit it was alleged, that no writ could produce action in this realm, which dissented from the form of writs allowed and required by the law of the kingdom where the pursuit was made, which was repelled; caution being found *ut supra*.

Act. Mawat.

Alt. Lermonth.

Clerk, Hay.

*Fol. Dic. v. 1. p. 320. Durie, p. 277.*1637. February 25. ROB *against* FRENCH.

UMQUHILE THOMAS FRENCH, being servitor to the King's Majesty in England, makes his testament in Scotland, and takes it with him to England, where he dies, and leaves to the pursuer, called John Rob, and to some other pursuers, certain legacies; and this testament being confirmed in the Prerogative Court

No 48.

A testament, confirmed in England by an executor nominate, was sustained as a good title in Scotland, though no inventory was given up, it not being the custom in England to make up inventories.

No 49.

The legatees, in an English testament were found obliged to confirm, the executor having confirmed.