

Pringle *contra* Kennedy, No 4. p. 4643; 25th July 1739, Horn *contra* Robertson.

No 6.

' THE LORDS found Mr Alexander liable in costs of suit, conjunctly with his constituent.'

Act. *M Laurin.*Alt. *Dalrymple.*Clerk, *Gibson.*

J M.

Fol. Dic. v. 3. p. 232. Fac. Col. No 57. p. 139.

* * In the same manner were decided the cases of Irvine against Wannock and Malcolm, June 1765, and Hope against Orr, 8th February 1780. See APPENDIX.

1792. December 19. AMELIA LEIGH *against* JAMES ROSE.

AMELIA LEIGH having prevailed in an action of declarator of marriage, before the Commissary Court, against Robert Sinclair, was found entitled to expenses. As Mr Sinclair was out of the kingdom, she insisted that Mr Rose, who had defended in the action, in virtue of a power of attorney from him, should be found personally liable for them; and so the Commissaries found.

Mr Rose having brought an advocacy of this judgment,

Pleaded, Although the factor for a foreigner, *pursuing* in this country, has been found personally liable in expenses, it is not equitable that this rule should be applied to the attorney of a foreign defender. A foreigner not being amenable to the courts of this country, it is reasonable, if he pursue in a groundless action, that he should find a person on the spot who shall be answerable for the costs. But before an action is commenced against a defender, either his person or his effects ought to be found in this country, in order to constitute an effectual jurisdiction over him. And in consequence of its being established in this manner, if the pursuer is found entitled to costs, it necessarily follows, that either the defender's person or his property must be liable to diligence at his instance, in order to render his claim for them effectual. There is not therefore the same occasion for subjecting his attorney personally; and without an absolute necessity, the law will never deviate so far from ordinary principles, as to make a factor liable for his constituent's debt. Besides, it is voluntary in a pursuer, but necessary for a defender, to come into court. It would therefore be inconsistent to force his attendance under a penal certification, and at the same time insist on his finding caution for the expenses incurred by the pursuer, which might in many cases preclude his appearance.

Answered, The steps which an attorney for a foreigner, whether pursuer or defender, takes in a process, are considered as the attorney's own proper acts and deeds, and therefore he must be personally liable for their consequences.

THE LORD ORDINARY remitted to the Commissaries, 'with this instruction, to assoilzie James Rose from expenses.'

No 7.
An attorney defending in an action for a person abroad, is not liable personally for the expenses awarded against his constituent.

No 7.

On advising a reclaiming petition, with answers, the Court adhered to the Lord Ordinary's interlocutor.

Lord Ordinary, *Justice-Clerk.* Act. *D. Smyth.* Alt. *M. Ross.* Clerk, *Home.*
R. D. *Fol. Dic. v. 3. p. 232.* *Fac. Col. No 8. p. 18.*

* * * The case of Ritchie against Scot, July 1784, had been decided in the same manner. See APPENEIX.

No 8.

A native of this country, whose principal residence is abroad, and who has no fixed domicile here, bringing an action before our Courts, must either find caution for the expenses which may be awarded against him, or constitute a responsible person, residing in Scotland, his attorney, for conducting the action.

1797. June 10. JAMES HOPE against WILLIAM MUTTER.

WILLIAM MUTTER purchased certain lands from the trustees of Robert Hope, and obtained a disposition from them, in virtue of which he was regularly infest.

Robert Hope died in 1775.

James Hope, Robert's brother, after having been many years settled in Ireland, came, in 1795, to Scotland, and having got himself infest as heir of Robert in the lands purchased by Mr Mutter, he brought a reduction and declarator against him, for having it found, that he held them in trust for Robert and his heirs.

Mr Mutter stated, that the pursuer's family was still in Ireland, where he himself frequently went; that he had no fixed domicile in this country, nor any effects from which the defender could recover his expenses, in case they should be awarded to him, which in all probability would happen, as the action was palpably groundless. He therefore craved that the pursuer should be ordained either to find caution to pay the expenses in which he might eventually be found liable, or constitute a responsible person his attorney, for carrying on the action.

THE LORD ORDINARY declined granting this request; but, on advising an incidental petition for the defender, the LORDS ordained the pursuer to find caution.

Lord Ordinary, *Craig.* For the Petitioner, *Arch. Campbell, junior.* Clerk, *Home.*
R. D. *Fac. Col. No 3. p. 5. of Appendix.*