

Reis
v.
Executors of
Gilloway.

the amount of their individual interests in the suit, might appeal. The sum of £500 was fixed on in the charter only as a criterion of the importance of the suit.

The question was mooted by the Chief Justice whether some of the several plaintiffs or defendants to a suit could appeal, unless all their co-plaintiffs or co-defendants joined in the appeal; but this point was not pressed to a decision by him, and was not urged by the respondent, it being admitted at the bar, on both sides, that by the Dutch law any one of a number of parties to a suit might appeal without the concurrence of the others.

Thereafter, on the application of the respondent, the Court, by consent, ordered that the sum in dispute remain in the hands of the executors until the decision of the appeal or the further order of the Court, they paying the interest to the respondent on his finding security for the same.

5. LANDSBERG v. MARCHAND.

[9th December, 1834.]

Where a Woman, married out of Community, is sued, it is necessary that the Summons be served also on the Husband.

Landsberg
v.
Marchand.

In this case, in which the plaintiff claimed provisional sentence, the summons ran thus:—

“Command J. D. Marchand of Wale-street, Cape Town, *if need be assisted by her husband, B. Marchand*, that justly and without delay she render, &c., and unless she shall do so, then summon the said J. D. Marchand, that she appear,” &c.

The summons had been served personally on the wife, and had not been served on the husband.

The Court dismissed the case, in respect that the summons had not been served on the husband.

They held that regularly the husband ought also personally to have been called in the summons; but they did not decide what would have been the effect of service of summons on the husband, if he had not been personally called, and an objection had been founded thereon; but in a previous case on the same day, in which the summons against the same defendant commanded the sheriff to summon her “assisted as aforesaid” (*i.e.* by her husband), and had been duly served on the husband as well as on the wife, the Court gave provisional sentence; no appearance having been made by either husband or wife.