

1534. *March 4.*

No 42.

JAMES KENNEDY of Blairquhan *against* THOMAS M'LELLAN of Gilston.

GIF ony action or cause intentit or persewit befor the Lordis of Sessioun, of swa greit difficultie that thay may not decide nor declare the samin, thay sould refer it to be decidit be the estatis in Parliament.

*Balfour, No 8. p. 268.*1534. *March 6.*ALEXANDER INNES of that ilk *against* M. ALEXANDER DUMBAR, Dean of Murray.

No 43.

Enumeration of various kinds of actions to which the Court of Session are competent.

THE LORDIS of Sessioun ar Jugeis competent to ken and cognosce *ex eisdem deductis*, or utherwayis, upon the retractatioun and validitie of ony decreit gevin be thame at the instance of ony persoun of befor, quhair ony uther persoun aliedgis him to be hurt be ane wrangous and unjust decreit, and libellis summoundis in dew form for reductioun thairof; quhatever happin to follow upon sic ane decreit; notwithstanding that efter the geving of the samin thair happin twentie, threttie, or ma zeiris to rin, befor the partie, aganis quhom it is gevin, raisis summoundis for reductioun thairof; because prescriptioun within fourtie zeiris at the leist hes na place in this cais.

The Lordis of Counsal, anent the reductioun and retreiting of decreitis gevin be thame at the instance of ony partie, ar equivalent, and representis the place of a competent Judge of appellation in the secund instance; the quhilk Judge of appellatioun is astrictit to procede in ony cause of appellatioun dewie interponit to him, and to confirm or infirm the sentence that is appealit fra, efter the meritis of the cause deducit befor him, albeit the landis of the appealler wer comprysit for the sowmes contenit in the first sentence, with infestment, ather to spiritual or temporal persoun, following thairupon.

Gif the Lordis of Counsal wer not Jugeis competent to the reductioun of all decreitis gevin befor thame, thair sould follow ane greit inconvenient and absurditie, viz. That albeit that ony persoun were enormlie hurt be decreit of the saidis Lordis, thair wer na remeid nor reformatioun to be had thairof; because thair is na competent Judge within this realme, havand sufficient facultie of our Soverane Lord, be quhais powar and jurisdiction the said pretended decreit may be reducit, bot the saidis Lordis alanerlie; and swa ane wrangous decreit and sentence sould remane unretreitit, in greit prejudice and enorme hurt of the partie aganis quhom it was gevin, causand the persounis obtenaris thairof to with-hald wrangous gudis and geir, quhilk thay micht not have of gude zeal and conscience, nor without greit danger of sum of the Jugeis that gave the samin; because, be the law, thay ar oblist to refund to the parties, quhom