

D I V I S I O N. II.

*Forum Competens Ratione Domicilii.*1579. March 7. JOHNSTON *against* JOHNSTON.

No 4.

The pursuer and defender being in the same jurisdiction, action may proceed before their own judge, though the thing in question be within another jurisdiction.

THERE was ane supplication given in be one Johnston, burghess of Edinburgh, that where he was persewit be another Johnston burghess in the samen, before the Provost and Bailies of the said burgh, to flit and remove frae certain field land not in the jurisdiction of the said Provost and Bailies, therefore desyrit the matter to be advocatit. It was reasonit be the Lords, that in respect they were both burghesses, *et quod actor sequebatur forum rei*, there should no advocacion be grantit, because the parties were not prejudgit when everie ane of them was convenit before their awne Judge competent. To this was *answerit*, That albeit the parties were both of one jurisdiction, yet the lands lay not in the same jurisdiction whereof the parties were, *et sic ratione rei de qua agitur* the action aught to be persewit before the Judge in whose jurisdiction the lands lie, *prout in cap. licet extra de foro competenti, et multo clarius et specialius, C. 3. Tit. 19. in L. ultima, ubi in rem actio exerceri debet.* THE LORDS would not grant advocacion, and ordainit the parties to use their defences, and fand that the Provost and Bailies might be Judges competent in such causes.

Fol. Dic. v. 1. p. 326. Colvil, MS. p. 280.

No 5. 1610. November 23. VERNOR *against* ELVIES.

THE LORDS will not find themselves Judges betwixt two Englishmen, being in this country not *animo remanendi sed negociandi tantum*, specially in matters of debt contracted forth of this country; but if any debt have been convened amongst them to be paid in this, the LORDS will be judges in that case.

Fol. Dic. v. 1. p. 326. Haddington, MS. No 2009.

No 6.

An action for slaughter pursued before a baron-court, altho' committed by a person residing within the barony, found to be incompetent.

1629. January 9. BARON OF BRUGHTON *against* KINCAID.

KINCAID of Warriston being pursued before the Baron-bailie for slaughter, and he having advocated the pursuit to the Lords, desiring that in respect of the ignorance of the Baron-Bailie, and the consequences of the matter, viz. a pursuit for his life, that the same should be remitted to the Justice-General, or else that the Lords

would adjoin to the Baron-Bailie some of their number, or some others of skill and knowledge, the LORDS, in respect the matter was criminal, thought that they could not judge thereon, but they assigned a day to the defender to supplicate the Lords of Secret Council in the matter; and in the mean time ordained the Baron-Bailie to cease, while the Council's pleasure were therein known; and if betwixt and the said day nothing should be shown by the defender to the Lords, concerning the Secret Council's proceeding therein, then they would return to the process, and do justice anent the remitting to the Justice-General, or to the Baron, the matter as appertains, and as any of the parties should crave process that day. See JURISDICTION.

No 6.

Act. Primrose.

Alt. Craig

Clerk, Gibson.

Durie, p. 413.

1630. March 3.

LO. LORN against L. PANHOLLS.

A PURSUIT being made by the donatar to the Earl of Argyle his liferent escheat against Graham of Panholls, vassal to the Earl of Argyle, before the Earl of Argyle and Lord Lorn's Baron-Bailie, for payment of the feu-duties contained in his charter of the lands of Panholls, holden of the Earl of Argyle divers years by-past; which being desired to be advocated upon this reason, because he was infeft in his lands *cum curiis*, &c. whereby he was not obliged to compare in his superior's court, being by that clause exempted therefrom; This reason was not sustained, for the LORDS found, that the vassal, albeit infeft *cum curiis*, was not thereby exempted from his superior's courts; but that notwithstanding thereof he was subject to his courts; and that by that clause he had only power to hold courts upon his own tenants of that ground for his farms, or for wrong done amongst themselves, which also was not privative of the over-Lord's jurisdiction; and if the vassal himself should do wrong, or commit blood, he might be convened therefor in his over-Lord's court, notwithstanding that he was infeft *cum curiis*; but the cause was advocated, because the pursuit was at the instance of the donatar to the Earl of Argyle his liferent, which could not be disputed before the Lord Lorn his Baron-Bailie. See JURISDICTION.

No 7.
A vassal although infeft *cum curiis* still amenable to the superior's courts.

Act. Miller.

Alt. Fletcher.

Clerk, Gibson.

Durie, p. 498.

1630. July 7.

LANDES against DICK.

AN action at Landes' instance being pursued before the Bailies of the Canon-gate, being the Bailies of the regality of Brughton, against Dick, for deforcing of

No 8.