

- No. 8. their officer, in execution of a precept of poinding, direct by themselves, and therefore to have tint his moveables, the one half thereof to pertain to the pursuers, the other half to the King, or Lord of the regality; this cause was advocated, because inferior Judges were not Judges competent to actions of this nature and consequence. *See JURISDICTION.*

Durie, p. 527.

1674. June 18.

WALKER *against* BROWN.

No 9.
Action for
teinds might
be prosecuted
before the
baillie of re-
gality.

MR GEORGE WALKER as chamberlain to the Earl of Tweddale pursues Brown of Finmouth for the teinds of his lands, especially for the fifth of his rent, as the worth thereof. Brown raises advocation on this reason, that the pursuit was before the Bailie of the regality of Dumfermling, who is the Earl of Tweddale's depute, and so decret cannot be taken in the Earl's own court, in name of his chamberlain for his behoof, and thereby the Judge is not competent, at least is most suspect. It was *answered*, That the reason is not relevant, otherwise Lords of regality, or other Lords or Barons could not pursue their own tenants or vassals in their own court, which yet is without question; and these teinds being a part of the Earl's rent, the pursuit therefore cannot be advocated upon that ground. It was *replied*, That though the mails and duties of property, or other rents liquidated, may be pursued for the Earl's behoof in his court; yet this is not liquidated by a valuation, but the fifth of the rent is pursued for.

THE LORDS repelled the reasons of advocation. *See JURISDICTION.*

Stair, v. 2. p. 273.

1701. July 15.

SPOTTISWOOD *against* MORISON.

No 10.
A person in
Haddington-
shire, who
resided often
in Edinburgh,
with his mo-
ther, and had
a seat in
church there,
found amen-
able to the
jurisdictions
of both coun-
ties.

MR JOHN SPOTTISWOOD, advocate, having got an assignation from Mr Harry Morison to a bond due to him by Morison of Prestongrange, he pursues him before the Sheriff of Edinburgh; but Prestongrange apprehending the assignation to have been elicited from Mr Harry *in lecto* to his prejudice, who was his nearest heir, *et alioqui successurus*, he give in a bill of advocation, on this reason, that he had his domicil in East Lothian, and so was not convenable before the Sheriff of Mid-Lothian. *Answered*, Prestongrange staid more at Edinburgh than in his country-house, and had *forum et larem* with his mother-in-law, Lady Craigleith, and had likewise a seat in the College-kirk of Edinburgh. *Replied*, He was still pursued *ceram non suo iudice*, because it could not be presumed that he had 40 days residence together within the town of Edinburgh, which is required by custom to establish a jurisdiction. THE LORDS considered that the gentlemen living near Edinburgh, though they had occasion frequently to be in town, yet did not reside constantly in either, but were going and