

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

coming betwixt the two; and if 40 days were required, they might shift both jurisdictions, and be convenable in neither, seeing they will scarcely be 40 days together in any of the two; therefore the LORDS in such a case thought them liable to both, and therefore repelled Prestongrange's reason of advocacy, and remitted the cause to the Sheriff. Some thought the proper remedy was to pursue such whose domicil was in a manner in both shires only before the Lords.

No 10.

Fol. Dic. v. 1. p. 326. Fountainball, v. 2. p. 119.

1708. February 14.

THOMSON and PROCURATOR-FISCAL of Dumblane against WRIGHT.

No 11.

THE LORDS turned into a libel the decree of an inferior Judge, fining a party for a riot, in regard of the incompetency of that court to judge therein; in so far as the *locus delicti* was within another jurisdiction; wherein also the defender had his *forum domicilii*, being at that time resident at a writer to the signet's country-house, whose apprentice he was, though not an house apprentice; and although the father, whose eldest son he was, had both his dwelling and whole estate within the jurisdiction where the son was attached.

Fol. Dic. v. 1. p. 326. Fountainball.

* * * See this case, No 14. p. 2921.

1709. November 12. LEES against PARLAN.

JAMES PARLAN having been entertained at bed and board for three years together, by James Lees merchant in Cashel, in the county of Tipperary in Ireland, and afterwards taking on to be a soldier in Colonel Ferguson's Cameronian regiment; and Lees having got no payment, he pursues him before the bailies of Perth in March 1702, where the regiment then lay quartered, for L. 32 Sterling, as his aliment foresaid; and Parlan being personally apprehended, is holden as confessed, and decret pronouncd against him, and thereon an adjudication is led of some acres belonging to him, lying near the town of Glasgow, dated in November 1703. Parlan the debtor, dying in Flanders, one Duncan Parlan, his cousin, serves heir to him, and pursues a reduction of the foresaid two decreets, one constituting the debt, and the other of adjudication; and against the last, offered to prove he was dead long before the pronouncing of it; and a commission being directed to Flanders, it was this day found proven by the clear testimonies of his fellow soldiers in the same company and regiment with him, that he died in June 1703, and they were at his burial; whereupon the

No 12.

A soldier may be cited at the place where he resides, though he has not been 40 days there.