

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.