

they may hurt be thair sentence, all damage and skaith quhilk they happin to sustene thairthrow; for in this cais *litem faciunt suam*.

No 43

The saidis Lordis of Counsal ar Jugeis competent to the reduction of all decreitis gevin be thame, notwithstanding, be vertue thair of, his landis, aganis quhom the samen was gevin; are comprysit, and infestment or mortificatioun thair of to the kirk followit thair upon; utherwayis it micht follow that the kirk sould bruik and joise ane wrangous possession, the quhilk in that cais hes na mair privilege, bot rather less than hes the temporal estait.

Balfour, No 9. p. 268.

1534. July 16.

A. against B.

No 44

THE Lordis of Sessioun alanerlie, and na uther inferior judge within this realme, ar jugeis to the Kingis actiounis; for his Hienes, nor his Advocat, may not be callit befor ony inferiour juge, bot befor thame alanerlie. The quhilk privilege is likewayis grantit and extendit to the Quenis dowariar.

Balfour, No 7. p. 267.

1541. January 25.

JOHN FINLAYSON against KER.

No 45

THE LORDIS of Counsal, of thair office, may help and supply the irrelevancie of ony exceptioun or allegiance proponit be the partie, throw the negligence and ignorance of him that is procuratour, gif the samin consistis *in facto*.

Balfour, No 10. p. 269.

* * Sinclair reports this case :

JOHN FINLAYSON called against N. Ker, the LORDS found, that, of the practice and consuetude, they may help and supply the irrelevancy of the pleas *ex exceptione* not conceived duly, and so did in the said Ker's exception opponed against violence intended against him by the said John, and so use the Lords to supply and help the fault, negligence, and ignorance of the procurators.

Sinclair, MS. p. 8.

1542. June 28.

FENTON and DOUGLAS against JOHNSTON.

No 46

JAMES FENTON and David Douglas had gotten letters of law-borrowis against Sir John Johnston priest, by the Lords deliverance, which letters the said priest called before the Lords, and asked them to be simpliciter suspended, because

Before the reformation, the Lords were never in use to grant letters of law-borrowis against

No 46.
a priest, but
remitted him
to his ordi-
nary.

the Lords were not competent judges to him. The Lords of Council for the said cause reduced and suspended the letters simpliciter, and remitted him to his Judge Ecclesiastical Ordinary, to find the lawborrows, as effeired of the law.

Fol. Dic. v. 1. p. 495. Sinclair, MS. p. 37.

1543. March 9. LORD BOTHWELL *against* FLEMINGS.

No 47.
Of old, the
Lords' juris-
diction in
maritime
affairs was
cumulative
with that of
the Admiral;
only in such
cases they
allowed him
to sit and
have his vote
with them.

CERTAIN Flemings called certain Leith men before the Lords of the Council, for spuilzying of them of their gear, and two ships upon the sea. The Lord Bothwell, Admiral, compeared before the said Lords, and alleged that matter pertained to him, as Admiral, of heritage, and desired the matter to be remitted to his Admiral-court, and the Lords not to proceed therein. The Flemings *alleged*, That albeit the Admiral was judge ordinary in this case, not the less the Lords of Council were also judges ordinary in all civil actions within the realm, by the first institution of the College of Justice, made by the King and the three Estates in Parliament; and that the Lords were in use of proceeding in such actions of strangers; and also, the books of Council bore, where, in such a case of Flemings against Robert Borland, in the year of God 1516, the same exception was proponed by the Lord Bothwell's procurators, and nevertheless the Lords proceeded in that matter, and so *tacite* repelled that exception; and also *alleged*, that albeit there be diverse Sheriffs ordinary judges in heritage, and also Lords of Regalities ordinary judges, nevertheless they might not, of the practice of Scotland, repledge any actions of their subjects from the Lords; and so are they the ordinary judges to all the realm; and of the law *actor potest reum, habentem plures judices, vocare coram quo eorum voluerit*; and so the action being begun before the Lords, it might not be remitted to the Admiral. The Lords of Council decerned themselves competent judges in this case, and repelled the said Admiral's exception for the causes before written, and proceeded finally to sentence in the said matter; and as use was of before, were content that the Admiral come and sit with them, and to have his vote with them in the cause, that he might see that justice were equally done.

Fol. Dic. v. 1. p. 495. Sinclair, MS. p. 58.

1548. March. ABBOT of PAISLEY *against* CRICHTON.

No 48.
The Lords
found them-
selves com-
petent judges
in a process
of baratry
against a
churchman.

THE LORDS, by interlocutor, decerned them competent judges to proceed against Mr William Crichton, priest of St Giles's kirk, accused before them for baratry; because, as was alleged, he impetrate the Bailie of Dunkeld in Rome without license of the Queen or Governor, contrary to the act of Parliament; notwithstanding he alleged he ought not to answer before them, by reason that