

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, BURGESS OF EDINBURGH, THAT WHERE HE WAS PERSEWIT BE ANOTHER JOHNSTON BURGESS 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 BURGASSES, *et quod actor sequebatur forum rei*, THERE SHOULD NO ADVOCATION 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 ADVOCATION, 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