

would adjoin to the Baron-Bailie some of their number, or some others of skill and knowledge, the LORDS, in respect the matter was criminal, thought that they could not judge thereon, but they assigned a day to the defender to supplicate the Lords of Secret Council in the matter; and in the mean time ordained the Baron-Bailie to cease, while the Council's pleasure were therein known; and if betwixt and the said day nothing should be shown by the defender to the Lords, concerning the Secret Council's proceeding therein, then they would return to the process, and do justice anent the remitting to the Justice-General, or to the Baron, the matter as appertains, and as any of the parties should crave process that day. See JURISDICTION.

No 6.

Act. *Primrose.*Alt. *Craig*Clerk, *Gibson.**Durie, p. 413.*1630. *March 3.*LO. LORN *against* L. PANHOLLS.

A PURSUIT being made by the donatar to the Earl of Argyle his liferent escheat against Graham of Panholls, vassal to the Earl of Argyle, before the Earl of Argyle and Lord Lorn's Baron-Bailie, for payment of the feu-duties contained in his charter of the lands of Panholls, holden of the Earl of Argyle divers years by-past; which being desired to be advocated upon this reason, because he was infeft in his lands *cum curiis*, &c. whereby he was not obliged to compare in his superior's court, being by that clause exempted therefrom; This reason was not sustained, for the LORDS found, that the vassal, albeit infeft *cum curiis*, was not thereby exempted from his superior's courts; but that notwithstanding thereof he was subject to his courts; and that by that clause he had only power to hold courts upon his own tenants of that ground for his farms, or for wrong done amongst themselves, which also was not privative of the over-Lord's jurisdiction; and if the vassal himself should do wrong, or commit blood, he might be convened therefor in his over-Lord's court, notwithstanding that he was infeft *cum curiis*; but the cause was advocated, because the pursuit was at the instance of the donatar to the Earl of Argyle his liferent, which could not be disputed before the Lord Lorn his Baron-Bailie. See JURISDICTION.

No 7.
A vassal although infeft *cum curiis* still amenable to the superior's courts.

Act. *Miller.*Alt. *Fletcher.*Clerk, *Gibson.**Durie, p. 498.*1630. *July 7.*LANDES *against* DICK.

AN action at Landes' instance being pursued before the Bailies of the Canon-gate, being the Bailies of the regality of Brughton, against Dick, for deforcing of

No 8.

- 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 *focum 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