

1534. *March 4.*

No 42.

JAMES KENNEDY of Blairquhan *against* THOMAS M'LELLAN of Gilston.

GIF ony action or cause intentit or persewit befoir the Lordis of Sessioun, of swa greit difficultie that thay may not decide nor declare the samin, thay sould refer it to be decidit be the estatis in Parliament.

*Balfour, No 8. p. 268.*1534. *March 6.*ALEXANDER INNES of that ilk *against* M. ALEXANDER DUMBAR, Dean of Murray.

No 43.

Enumeration of various kinds of actions to which the Court of Session are competent.

THE LORDIS of Sessioun ar Jugeis competent to ken and cognosce *ex eisdem deductis*, or utherwayis, upon the retractatioun and validitie of ony decreit gevin be thame at the instance of ony persoun of befoir, quhair ony uther persoun aliedgis him to be hurt be ane wrangous and unjust decreit, and libellis summoundis in dew form for reductioun thairof; quhatever happin to follow upon sic ane decreit; notwithstanding that efter the geving of the samin thair happin twentie, threttie, or ma zeiris to rin, befoir the partie, aganis quhom it is gevin, raisis summoundis for reductioun thairof; because prescriptioun within fourtie zeiris at the leist hes na place in this cais.

The Lordis of Counsal, anent the reductioun and retreiting of decreitis gevin be thame at the instance of ony partie, ar equivalent, and representis the place of a competent Judge of appellation in the secund instance; the quhilk Judge of appellatioun is astrictit to procede in ony cause of appellatioun dewie interponit to him, and to confirm or infirm the sentence that is appealit fra, efter the meritis of the cause deducit befoir him, albeit the landis of the appealler wer comprysit for the sowmes contenit in the first sentence, with infestment, ather to spiritual or temporal persoun, following thairupon.

Gif the Lordis of Counsal wer not Jugeis competent to the reductioun of all decreitis gevin befoir thame, thair sould follow ane greit inconvenient and absurditie, viz. That albeit that ony persoun were enormlie hurt be decreit of the saidis Lordis, thair wer na remeid nor reformatioun to be had thairof; because thair is na competent Judge within this realme, havand sufficient facultie of our Soverane Lord, he quhais powar and jurisdiction the said pretended decreit may be reducit, bot the saidis Lordis alanerlie; and swa ane wrangous decreit and sentence sould remane unretreitit, in greit prejudice and enorme hurt of the partie aganis quhom it was gevin, causand the persounis obtenaris thairof to with-hald wrangous gudis and geir, quhilk thay micht not have of gude zeal and conscience, nor without greit danger of sum of the Jugeis that gave the samin; because, be the law, thay ar oblist to refund to the parties, quhom

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