

D I V I S I O N I V .

Forum competens ratione rei sitæ et contractus.

1581. February 28. LAWSON against The MAGISTRATES of Edinburgh.

THE Laird of Heiriggs callit Lawson, having obtained ane decret before the Sheriff of Lothian, against the Provost, Bailies, and Town of Edinburgh, for the wrongous troubling him in the possession of the lands and heritages, desyrnt letters conform to the said decret. It was *objectit* be the Provost and Bailies, That he aught to have no letters conform, because ' fuit decretum non a suo judice latum et nullam merebatur executionem; ' because the Sheriff of Lothian could not be Judge competent to the Provost and Bailies of the town of Edinburgh; but if any wrang had been done be them, they should have been convened before their ain Judge-ordinar, ' quia actor tenetur sequi forum rei.' To this was *answerit*, That the decret standing, they could not make this allegiance, ' et de jure licet actor tenetur sequi forum rei, tamen ratione rei de qua agebatur, sortitur quis forum alibi, prout C. extra. de foro competenti; ' and so the lands lying within the sheriffdom of Lothian, the said Sheriffs and their deputes were Judges competent to the giving of the said decret; and this declinator also aught to have been alleged before the giving of the said decret. THE LORDS repellit the allegiance, and decernit letters conform to the said decret.

Fol. Dic. v. 1. p. 327. Colvil, MS. p. 319.

1623. February 5. ——— against KENNEDY.

IN a reduction of a decret, persewed be the Commissar of Glasgow, against one Kennedy, as intromitter with the goods of one ———, who dwelt and died in the diocese of Glasgow, the LORDS fand the decret null, as given *a non suo judice*; because, suppose the executor might have been pursued before the Commissar of Glasgow, yet, since the pursuit was against an intromitter dwelling within the diocese of Galloway, *actor debbat sequi forum rei*, and have pursued before the Commissar of Wigton.

Fol. Dic. v. 1. p. 327. Haddington, MS. No 2747.

No
The
be exempt
from the Sher-
riff's jurisdic-
tion, the Ma-
gistrates may
be pursued
before the
Sheriff, when
the subject in
dispute is
within his ju-
isdiction.

No 21.
A decree gi-
ven by a com-
missary, a-
gainst an in-
tromitter with
the goods of a
person who
died within
his jurisdic-
tion was re-
duced, be-
cause the in-

* * Durie reports the same case :

No 21.

Intromitter
dwelt in ano-
ther commis-
sariot.

IN an action betwixt ————, the LORDS found a decret null, given against the defenders therein contained, pronounced by the Commissary of Glasgow, because it was given against them as intromitters with the defunct's gear ; which intromitters dwelt not within the bounds of his jurisdiction, and of the commissariot ; albeit it was *answered*, That the defunct died within his jurisdiction and commissariot, and that his testament was subject to be confirmed by him, and that the goods intromitted with by the defenders lay within his bounds, and were intromitted with by them there ; which was repelled by the LORDS, and the decret found null, because the persons who intromitted dwelt not within his bounds.

Durie, p. 44.

1624. *March 11.*

LAMB *against* HEATH.

No 22.

Action to affect heritable subjects belonging to an Englishman situated in Scotland, may be prosecuted in Scotland.

IN an action of improbation pursued by James Lamb against Letitia Heath, who was an Englishwoman born, and ever remaining in London, for improving of her right of a tenement of land in Edinburgh, whereto she claimed right by comprising and sasine ; the LORDS sustained this process against her, albeit she was a stranger born and bred, and dwelling ever in England, because the the subject of the action was for land within Scotland, whereto she claimed right, which could not be decided but by the Judges in Scots causes, and so *ratione rei* found that she was subject to the jurisdiction of this realm. The action here was real, but if it had been personal, they had not been Judges competent.

Act. *Nicolson & Lawrie.*

Alt. *Hope & Mowat.*

Clerk, *Scot.*

Durie, p. 120.

* * Haddington reports the same case :

JAMES LAMB pursued an action of reduction and improbation of certain bonds whereupon his lands in Edinburgh were comprised, and against the said comprising, and called also Letitia Heath, Englishwoman, upon threescore days warning. It was *excepted*, That no process could be granted against her ; because, being ane stranger born in England, and dwelling there from her birth, she was not a subject of Scotland, nor subject to the jurisdiction of any Judge within the same. It was *answered*, That she having right to land within the kingdom, which was sought to be impugned by a subject, the cause behoved