

JURISDICTION.

DIVISION I.

Nature of Jurisdiction.

SECT. I.

What authority a Judge has *extra territorium*.

1671. December 5.

MILLER *against* CRAWFORD, OSBURN, and The LAIRD of BISHOPTON.

ROBERT KELSO being debtor to the said parties, and having sold his lands of Kelso bound to Bishopton the same day of the disposition, he assigned Crawford and Osburn for satisfaction of the sums; who intimate that same day; and that same day Mr Andrew Miller arrested in Bishopton's hand, and pursues to make forth-coming. The assignees *alleged*, They must be preferred, because the arrestment is null, being upon the Bailie of Cunningham's precept of arrestment executed at Paisley, *extra districtum*. It was *answered*, Bishopton was dwelling within the Bailliary, albeit he was found without the same; and the execution of arrestment being but the intimation of a judicial act, whereby the Judge arrests all the debtor's goods within his jurisdiction, it was sufficient, especially seeing the debtor was bankrupt, and by his assignation did prefer one creditor to another, and that the Bailie of Cunningham is also Sheriff of Renfrew where Paisley lies.

THE LORDS found the arrestment null, and preferred the assignees.

Fol. Dic. v. 1. p. 491. Stair, v. 2. p. 18.

No 1.
An arrestment upon a bailie's precept executed *extra territorium* is null, although the debtor live within the bailiary.

* * * Gosford reports this case :

No 1.

In a double poinding raised at the instance of the Laird of Bishopton against Mr Andrew Miller and Hugh Crawford, the debate for preference was, that Miller had arrested upon a precept granted by the Bailie of Cunningham, that same day that Crawford as assignee had intimated his assignation. It was *alleged* for the assignee, That the arrestment could not be respected, because it was executed at Paisley, which was not within the jurisdiction of the Bailie of Cunningham. It was *answered*, That Bishopton did live within the Bailiary, and so the arrestment might be executed at any place without the same. THE LORDS did find the arrestment null as being executed *extra districtum*.

Gosford, MS. No 416. p. 210.

No 2.

A woman restricted her jointure and confirmed it by oath before a judge *extra territorium*. Found that being *actus voluntariæ jurisdictionis*, it was competent before any judge.

1688. February 3. COCHRAN against LADY BATHGATE.

THE case of Cochran of Balbachlaw and the Lady Bathgate, was debated *in presentia*. The Lady pursuing a poinding of the ground for her whole annuity of 2500 merks, it was *alleged*, she had restricted herself to 1200 merks; and though this might seem *donatio inter virum et uxorem*, yet it was truly to the creditors, and was *donatio juramento confirmata*; which though it did not bind by the civil law, yet it was obligatory *jure canonico*, where *omne juramentum est servandum quod non vergit in dispendium et læsionem animæ*, they having more loss by the perjury, than by keeping of the oath; and binds her by our 83d act of Parliament 1481. *Answered*, 1mo, If a woman has *læsis enormissima* by her renunciation and oath, she is reponed; because then she might renounce all her jointure and ruin herself, and she is privileged like a minor. *Replied*, There is a competency left her here; for the estate is but 2,000 merks a year, and 1,200 merks is more than the *rationabilis tertia* given to widows, being 200 merks above the half. Then she *alleged* her oath was null, 1mo, Because it was not signed: 2do, It was taken *a judice non competente*, viz. the Sheriff of Edinburgh, in the Abbey, which is *extra ejus territorium*. *Answered* to the 1st, Her oath is craved, if she did not judicially ratify. To the 2d, It is *actus voluntariæ jurisdictionis*, and needs not be *pro tribunali*, and any Judge is competent for that: Which the Lords found, but ordained to depone on the first. She also *alleged*, That the restriction was never a delivered evident; but it was urged her swearing supplied the not delivery.

On a bill given in by Balbachlaw, she was ordained to depone in presence of the Sheriff, and the Sheriff clerk who took her oath, and were to be confronted with her.

Fol. Dic. v. I. p. 492. Fountainball, v. I. p. 496.