

since the Union; for the statute, by a reference to such of the former commissions as had a power of reviewing their own decreets, has invested it with the same authority. Nor can it be well supported on any other ground, it being the province of the legislature alone to limit, by a regulation so general and arbitrary, the interposition of courts of law. Indeed the propriety of such a restriction may justly be called in question; for if, by an alteration in the mode of living, or by an enlargement of the fund out of which the stipend is payable, the situation of a parish be greatly altered since the year 1707, why should the incumbent be restrained from obtaining a suitable addition to his income? or where is the justice in determining that a liberal provision, granted on the day the commission 1693 expired, should yet admit of increase, while the most scanty one bestowed by the commission in 1707 must remain unalterable? Nor are precedents wanting to justify a deviation even from this rule, which, it is to be remarked, is neither published in the records, nor in any book of practice.

ORDERED and ADJUDGED, 'That the interlocutors complained of, be reversed, and the cause remitted to the Court of Session to proceed accordingly.'

C.

Fac. Col. (APPENDIX.) No 2. p. 3.

No 192.

DIVISION V.

Inferior-Courts.

SECT. I.

Jurisdiction with regard to Ejection.—Improbation.—Contravention.
Process of Transference.—Clandestine Marriage.

1586. *November.*

HOME against HOME.

IN an action of ejection pursued by George Home, son to the guidman of Manderston, as lawful and undoubted assignee, constituted by one Paxton, for ejecting of him forth of certain lands, it was *answered* by David Home, That

No 193.

An inferior judge cannot judge of an ejection.

No 193. there was no ejection committed, because the said David entered him who was alleged to have been ejected, and put him into the said land and possession by virtue of a decree given by the Bailie of regality of Coldingham, *et sic auctore prætoris*; and he that was entered was entered by virtue of a decree given by the said Bailie of regality, decerning him to have been wronguously ejected, and the other restored to the possession of the ground. It was *alleged*, That the Bailie of regality, and his depute, likeas no Bailie of any court, albeit he be a judge ordinary, had no power to sit upon ejections, which was admitted by the whole Lords.

Fol. Dic. v. 1. p. 501. Colvil, MS. p. 410.

1611. February 28. MURRAY against HOWIESON.

No 194.

IN an action of advocation produced by John Murray *contra* Janet Howieson, the LORDS found, that the Commissaries might not be judges to the improbation of the executions of their own precepts *post sententiam*.

Fol. Dic. v. 1. p. 501. Kerse, MS. fol. 175.

1622. March 12. MARSHAL against BLAIR.

No 195.

Inferior judges may proceed in contraventions of small importance, especially where they depend upon acts of law-borrows found in their own courts, and where the pain is small.

IN an action betwixt Marshal and Blair, where Blair being acted in the Bailie-court books of Canongate, for keeping of the King's peace, under pain of 40 pounds; whereupon action of contravention being pursued before the Bailies of the Canongate, for contravening of the act; this action being desired to be advocated, upon this reason, that no inferior judge ought to cognosce in contraventions, and that such actions were not proper to their judicatory; but that the Lords of Session were only competent judges to all such causes;— THE LORDS remitted the matter to the Bailies of the Canongate, and found, that inferior judges might proceed in contraventions of such small importance, especially where the same depends upon acts of law-borrows found in their own courts, and where the pain is so little.

Act. *M^cGill.*

Alt. *Oliphant.*

Clerk, *Scot.*

Fol. Dic. v. 1. p. 501. Durie, p. 21.

* * * Haddington reports this case :

BLAIR having found caution of law-borrows to Marshal, before the Bailie of the Canongate, under the pain of L. 40, was pursued by the said Marshal, for contravention before the said Bailies. The cause was sought to be advocated; because it was *alleged*, that no inferior judge may cognosce upon contraven-