

TRANSFERENCE.

1566. July 26. MAXWELL *against* DUNDRENNON.

No. 1.

A contract past between the master of Maxwell and the Abbot of Dundrennon, to which the Abbot made Marion Boswell assignee, who transferred her right in N. Colvil. This Colvil sought to have the contract transferred in his own person against the master. Alleged, It could not be transferred in the pursuer till it were first transferred in his assignee. Which allegiance was repelled.

Spottiswood, p. 340.

1624. February 26. MR. ALEXANDER SPITTLE *against* SCOTT of DRYOP.

No. 2.

Mr. Alexander Spittle having registered a bond of 2000 merks, owing by Scot of Dryop, younger, to him, arrested certain goods and gear belonging to him in his father's hands, old Dryop. Afterwards the young man being dead, he charged the father to make the arrested goods forthcoming; which was not sustained un- till he first transferred the decret in his heir's person.

Spottiswood, p. 340.

1624. March 25. ROBS *against* PROVOST and BAILIES of ABERDEEN.

No. 3.

Robs, apothecary in Aberdeen, having obtained a decret before the Provost and Bailies of Aberdeen, against one Liddel, for £.140, he dying, his executors confirmed and transferred that decret before the Commissary of Aberdeen, and charged the debtor, who suspended as not being lawful to the Commissary to transfer the same. The Lords found that no judge had power to transfer another Judge's decret, who was not subordinate to him.

Spottiswood, p. 340.

* * Durie reports this case :

In a suspension betwixt Liddel and Robbs, whereby a decret was desired to be suspended, which was transferred before the Commissary of Aberdeen, the principal decret being recovered before the provost and Baillies of Aberdeen ; in the which suspension, the Lords found the reason thereof relevant, and the decret of transferring foresaid, given by the Commissary of Aberdeen, to be null, because the Lords found that the Commissary's power and jurisdiction extended not to transfer the decret and sentence obtained before any other Judge ; likewise they found, that no inferior Judge had power to transfer the decret given and pronounced in another inferior Judge's Court ; for albeit a Judge might transfer the sentence, in some cases, given in his own Court, yet he had not that power, in sentences pronounced in other Courts, but such transferrings ought to be sought in the sovereign Courts, to which the other judicatories were subaltern. And this was found, albeit the decret of transferring was desired to be maintained, as properly belonging to the jurisdiction of the Commissary, and as being a consistorial matter, because the decret was transferred active, only in the executors of the defunct, obtainer of the sentence, and so pertaining to the executors, therefore the commissary was Judge ; which was repelled.

Act. Mowat.

Alt. Nicolson, younger.

Clerk, Gibson.

Durie, p. 124.

1626. March 22. Mr. PATRICK COLLACE against The LAIRD of ELPHINSTON.

No. 4.
Transference
of a decree of
comprising.

Mr. Patrick Collace, assignee constituted by William Henderson, and general heir served and retoured to John Henderson, burges of Haddington, in and to a decret of comprising deduced at the said John's instance, against umquhile Mr. Robert Johnston, charged the Laird of Elphinston as superior to infest him. He suspended, alleging the decret should be transferred in Mr. Patrick *active*, and against the heir or apparent heir of Mr. Robert and the Laird of Elphinston as superior *passive*, because umquhile John Henderson, at whose instance the comprising was deduced, was dead ; and also Mr. Robert against whom it was led, and that long before this assignation ; and so till it were transferred no process (it being of the nature of other decreets) till infestment follow thereupon ; for if Mr. Robert had given a bond to the said John for infesting of him in his lands, and John had registrated the same, and charged for implementing thereof, and thereafter deceased, William his heir could have no action thereupon till first he had transferred the same in himself *active* ; *multo magis* where they are both dead. The Lords sustained the charge against the superior.

Spottiswood, p. 340.