

tions, especially because the King's Treasurer and Advocate are parties who are not holden to compear before inferior judges; nevertheless the LORDS remitted the cause to the Bailies of the Canongate, because the caution was found before them, and the parties were poor, and the pain of law-borrows small.

No 195.

*Haddington, MS. No 2610.*

1628. *January 18.* NASMITH *against* RUTHVENS.

No 196.

A COMMISSARY may be judge in an action of transferring, *active* of his own decree.

*Fol. Dic. v. I. p. 501. Durie.*

\* \* This case is No 119. p. 5567. *voce* HERITABLE and MOVEABLE.

1630. *November 30.* LA. WILLIAMSON *against* CUSHNIE.

No 197.

AN advocation being sought from the Sheriff of Aberdeen, upon this reason, that he admitted an exception of improbation of a writ, produced before him for the pursuer's title, whereas inferior Judges are not competent Judges to improbations, but only the Lords of Session; seeing inferior Judges are only Judges to improbation of executions and citations, used in process deduced before themselves; this reason was not sustained; for the LORDS found, that all inferior Judges are Judges to improbations, of whatsoever writ, used by parties, and produced in any process pursued before them, where the improbation is proponed by way of exception or reply, and where the direct manner is extant, but not otherwise; nor by way of action, nor where the direct manner is not extant; and if they repel any such allegiance of improbation, the LORDS found it iniquity, and, being verified, to be a just cause of advocation.

*Act. Mowat.*

*Alt. ———*

*Clerk, Hay.*

*Fol. Dic. v. I. p. 500. Durie, p. 543.*

1631. *July 21.* ADAMSON *against* PATERSON.

No 198.

FOUND, That a decret, obtained before the Dean of Guild of Edinburgh, could not be transferred before the Bailies there; yet, in that same decret, they having transferred a bond registered in their own books, it was sustained for that part, though it was alleged, that no inferior Judge could transfer their own decret.

*Fol. Dic. v. I. p. 501. Spottiswood, (TRANSFERRING.) p. 340.*