

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.*

\*.\* Durie reports this case.

No 198.

MR JOHN ADAMSON having obtained decret against Masterton, before the Dean of Guild of Edinburgh, and another before the Provost and Bailies of Edinburgh, against the same defender; who dying, he obtains decret of transferring of both these sentences, in one representing the defender deceased, before the Provost and Bailies of Edinburgh; which being suspended, the LORDS found in that suspension, without other process of reduction, this decret of transferring null, whereby the Provost and Bailies transferred the decret given by the Dean of Guild; for they found, that an inferior Judge had no power to transfer the decret given by another inferior Judge, for he could not execute such a decret, and so neither transfer it; and found, that the judgment and jurisdiction of the Dean of Guild is distinct, and a several judicatory from the court and jurisdiction of the Provost and Bailies; albeit the Dean of Guild be an officer and Magistrate of the same burgh, and that the one is not a judicatory subaltern to the other. But the LORDS found, that an inferior Judge might transfer that decret, which was given in his own Court; for that transferring was but a preparation to the execution thereof, and he might execute his own decret, and, therefore, transfer the same; and, consequently, the transferring by the Provost and Bailies of that decret, which was given by them, in their own Court, was sustained.

Clerk, Hay.

*Fol. Dic. v. I. p. 501. Durie, p. 599.*

1634. March 8.

SMITH *against* MILLER.

No 199.

A cause was advocated, because an inferior Judge had proceeded on a warrant of arrestment granted by another inferior Judge.

IN an advocation of a pursuit moved before an inferior Judge, for making of arrested goods furthcoming, because the arrestment, which was the ground of that pursuit, was executed by virtue of a precept, directed by warrant of another inferior Judge, and no Judge ought to proceed upon pursuit moved upon that arrestment, but that Judge only, by the warrant of whose precept the arrestment was laid on and executed; this reason was found relevant; for the LORDS found, no other inferior Judge ought to proceed upon such precepts and actions, which were only intended upon these grounds, but that Judge alone who directed the warrant and precept to arrest; and it was thought by the Lords, that, if the arrestment had been executed by virtue of letters of arrestment, directed by the Lords of Session, that no inferior Judge could proceed in any action, to make these arrested goods furthcoming, but only the Lords of Session; albeit some were of a contrary opinion, anent this case of arrestment, by warrant of the Lords letters, whereupon they thought any Judge might proceed, as a good ground to all actions everywhere; but