

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.

No 194.

1611. February 28. MURRAY *against* HOWIESON.

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.

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.

1622. March 12. MARSHAL *against* BLAIR.

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-

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.