

. 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. 1. 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 advocacion 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

this point was not decided, seeing it was but drawn in to be reasoned upon, by way of argument in this case, where the action was moved upon an arrestment, directed by another inferior Judge, and the case appears not alike; for, by the arrestment made by the Lords' letters, all the Judges within the realm may seem to proceed, seeing the Lords' jurisdiction is universal, over all the kingdom; and, if the arrestment made by any inferior Judge may be a warrant to that Judge himself to proceed thereon, far more may it appear reasonable, that he may proceed upon the warrant of the more Supreme Judge; for it is, in effect, a power to him so to do, which is not alike among inferior Judges themselves, where their acts are distinct, and their jurisdiction is not universal, and where, *par in parem non habet imperium*, neither may he usurp upon what pertains to his equal; even as an inferior Judge may proceed upon an obligation, although registered in the books of Session.

Clerk, Gibson.

Durie, p. 710.

No 199.

1635. December 5.

SUTOR against CRAMOND.

A SHERIFF may grant a precept of poinding upon his own decree, and cause the same to be put to execution, without a particular warrant from the Court of Session.

Fol. Dic. v. 1. p. 502. Durie.

No 200.

* * This case is No 8. p. 3098. *voce* CONSUETUDE.

1674. January 9.

DENHOLM against JOHNSTON.

In a transferring of an action, depending before the Commissaries, wherein there was litiscontestation; it was *alleged* for the defender, The Commissaries being competent Judges, *in prima instantia*, as likewise to the transferring of such processes as depend before them, it was against all form to transfer before the Lords, who are only in use to transfer decreets pursued or recovered before themselves. It was *replied*, That, as the Lords may advocate the cause from the commissaries, so they may transfer any dependence before them; likeas, the pursuer having a declarator raised before the Lords, for recovering of that same debt, these actions ought not to divide; and the Session being the more sovereign judicatory, ought to draw that action before the Commissaries to the Session, there being *contingentia causæ*. THE LORDS did sustain the allegiance, and found, that, in form, the transferring against the heirs and executors of a defunct, who was pursued before an inferior Court, could not be intended but

No 201.

The Court, before which a process depends, is the only one competent for transferring, unless the representatives live in another territory; in which case, the Court of Session must transfer.