

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.