

1671. *February 22.*

Anent TRANSFERRING OF PROCESSES.

IT being questioned whether a process before the Lords, having come the length of an act, and the pursuer dying, his heir or executor might transfer that process before an inferior Judge. Sir G. Lockhart thought he undoubtedly might, seeing that was only done to establish the right of it in his person, providing, when he comes to proceed in the cause, he brings it back again to the Lords. Yet there is a doubt anent sic causes as cannot be intended before inferior judicatories, as improbations, &c. though improbation may be proponed there by way of exception. The cause why it is sought to be transferred rather before an inferior Judge than the Lords, was because it will be cheaper by far than to pay L.3 for every sheet.

Improbations of executions used in processes before themselves may be pursued before inferior Courts, *ult. Nov. 1630. Laird Winstone against Cushine.*

Advocates' MS. No. 140, folio 91.

1671. *February 22.*

Anent SUSPENSIONS.

QUÆRITUR, if a charge of horning be suspended simply, whether this will debar all execution, both personal and real, so that the charger cannot comprise in the mean time? and it is thought it will, unless it reserve expressly apprising of lands: and it is now turned *a brocardicum* that nothing can stop signet letter but signet letters, and so nothing can stop a comprising but a signet suspension: and consequently it was arbitrary and illegal to my Lord President lately on a bill to stop Douchryes' son's apprising of my Lord Monteith's estate, and the messenger should have respected nothing but a signet suspension.

Vide infra, February 1677, No. 555, § 4.

Advocates' MS. No. 141, folio 91.

1671. *February 22.*

Anent EXECUTIONS.

In a pursuit of declarator of escheat, Objected, *1mo*, Not tabled. *2do*, The horning is null, because the execution bears not six knocks to have been given. Both were sustained, and the defender was ordained to table, and take up his executions and mend them.

Advocates' MS. No. 142, folio 91.

1671. *February 22.*HARY JOUSSIE *against* Captain LERMONT.

IN an action, Hary Joussie against Captain Lermont, the defender was not found liable for exchange and re-exchange, or protest money, seeing he had

no provisions of the pursuer's then in his hands, but something that is yet under debate and controversy.

Advocates' MS. No. 143, folio 91.

1671. *February 22.* The Earl of ERROLL *against* the Earl of FINLATOR and OTHERS.

THE barony of Arroll being sold in this Earl's minority to my Lord Kinnoule for 589,000 merks; in the contract Kinnoule, and sundry others with him, were obliged with that vast price to satisfy the particular debts given them up which burdened the estate of Erroll, and to report valid discharges thereof. This pursuit is now for seeing if the money was employed for the use to which it was destinate, and for reporting these discharges.

Advocates' MS. No. 144, folio 91.

1671. *February 22.* MR. THOMAS RAMSAY Minister at Mordingtoun, *against* the MINISTER and HERITORS of Aytoun Parish.

In anno 1650, the lands of Longformacus being dismembered from Mordington kirk, in place thereof the lands of Lamerton were annexed, and so continued till the 1663; at which time Mr. Wm. Home, minister at Aytoun, taking advantage of the time, he obtains a decret of reduction of that decret for non production. Mr. Thomas Ramsay having intented a reduction of this decret reductive, and craving to be reponed against the same, because now he was willing to produce the decret, and for the purging of his contumacy we smoothed it over the best way we could, they did at last repone us; and after much debate, the Lords' Commissioners for plantation of kirks did again annex Lamerton to Mordington, and for the stipend that was due furth of Lamerton they divided it equally betwixt them, and appointed it so to continue in all time coming, and ordained the minister of Mordington to enter to the possession of the half for the last crop, 1670; which interlocutor the heritors of Aytoun having stopped, because in it there was action expressly reserved to the minister of Aytoun for making up his stipend the length of what it was before, and having given in a bill upon the practique of the minister of North Leith and that of Dreme, which was annexed to Athelstanefoord kirk and some other things, upon the matter of which bill having heard us fully debate, they, notwithstanding thereof, adhered to their former interlocutor. See all fully in the informations. It was much talked of, to see a nonconformist minister gain a cause against a conformist in a mixed Court where there were so many churchmen.

Vide infra, No. 395. [*Minister of Aytoun against the Parishioners, June 1673.*]

Advocates' MS. No. 145, folio 91.