

186. Inletoun. About 1630, in a case before an inferior Judge points were to be proved by witnesses in a prison. Nelson, the Lord of Session, upon a petition offered to him by the said inferior Judge granted warrant and power to him to direct a Commission to the Judges where the witnesses resided to examine them & take their oaths. 7 February 1629 Town of Goring Supplicants.

An inferior Judge hath no power to transfer a Decree given by one other inferior Judge, nor to execute the same: but such things ought to be done by the sovereign Courts to which other Judicatories are subordinate. 26 March 1624 Liddell contra Robbs 21 July 1631 Steam contra Masterton. Yet any inferior Judge may transfer a Decree given in his own Court, which transferring is only a preparatory step to the Execution thereof of 21 July 1631 Steam contra Masterton.

Judicial of the falseness of writs by the indirect manner of Improbation, that is, by Circumstances and presumptions of Honor Nobilit officij and Altior is Judicinis is not trusted to inferior Judges because of the difficulty thereof, but competent only to the Lords of Session.

Improbation of writs by the direct manner can only be put forth before the Lords of Session. But Improbation of writs by the direct manner may be proposed before inferior Judges in default by way of Exception for Repley, null, Novemb 1630 William contra Cuthney Spottwood Prath. In Improbation of Writs as above on act of Parl. 6 J. 4. Which is necessary for Extricating and Dismissing their Business. For otherwise it were safe to stop their proceedings in any case by alleging that the bond or writ purged on is false, or by offering to prove the Executions of the summons. Yet no inferior Judge can reduce his own Decree as having proceeded on false Executions, the given by his own officers: But he might fine the officer without prejudice to further punishment for the crime of falseness 26 January 1677 Cowan contra Procurator Fiscal of the Commissariat of Glasgow. Because such a Judge is functus after sentence.

In some difficult cases assessor are appointed to inferior Judges: as used to be done some times by the Lords of Session 13 December 1634 John and Balmerino and More frequently by the Privy Council of Scotland to the Justice Deputes and Judge Admiral in Criminal causes. The Lords of Session Name Assessor to their own Masters in the serving of Briefs, and to Messengers in the Apprising of land. Which an Assessor may be set and Declined for the same.

(7) nec can. one p. 63 as Abucalo or procurator in a cause where he sits as Judge. L. 6. C. 2. postill. or as assessor. L. 11. C. 9. p. 63.

Same ground of suspicion of partiality, as the Judges themselves might be challenged upon and Excepted against, there being Par Ratio for both. If the Assessor should be Declined, or not accept the office the Judge to whom they were given cannot (as returning to his own Authority and power) proceed to hear and determine the cause without Assessor, as if none had been named. Thus Assessor to the Justice Deputes in a Criminal Cause for the burning of a house with several persons therein, being named by the privy Council upon Application made by the pursuers, and the Defender having Declined one of those Assessor as in a Degree nearer than that of Rufin Gorman to one of the persons burnt in the said house, and the Rest of the Assessor being absent: the Justice Deputes found that he could not proceed in the trial. Albeit it was alleged for the pursuers, that the Warrant of adjoining such Assessor being procured by them Alloverly, they offered to give up and remaine at Juris pro se Juris: In this respect the Warrant being once issued in Judgment, could not be pass from or taken up by the pursuers to the prejudice of the pannel, who would have pleaded Assessor, had not the pursuers done it to his hand 3 August 1632 M. Funtloy & others contra Goshoch. But in that case 4 August 1632 upon a subsequent Act of the Privy Council Commanding the Justice Deputes to proceed by them selves without Assessor, the trial went on. The Kings Domestic servants and Relations cannot be Declined to sit as Assessor in his Majesties causes, June 1608 Margat & others. bid. vol. i pag. 1621.

Those who plead before inferior Courts are termed procurators. A Procurators Comparance for one before an inferior Court without having the parties special Mandate or Warrant for so doing, or producing Writs for him that might prefer a Warrant doth not make a Decree pronounced against the party upon such Comparance, to be a Decree in force 6 December 1678 Law contra Smith & Gornies. 24 November 1676 Grant contra Gornies. Such procurators are tacitly authorized to appear for those whose papers they have in their hands, or for whom they propose special allegations in Matters of fact. Stat. Just. lib. 1. tit. 12. § 12. But they cannot defend the Verity of a point to the other parties.