

SECT. IV.

Dispensation to hold courts during vacation.

1624. July 8.

RICHARDSON *against* HAY.

No 214.
A baron may pursue his tenants for their rents in his own courts in time of vacation, tho' he have no dispensation.

IN a suspension betwixt Robert Richardson, burges of Anstruther, and Hay, the LORDS found, that a baron may pursue his tenant for payment of his farms in his own courts in feriat and close time of vacance, albeit he have no dispensation to sit; and therefore they sustained a decret so given, which was quarrelled in that suspension as null, being given in feriat time without dispensation; this decret also being alleged to be null, because it bore to be given without any other probation, but that the defender confessed the summons to be true; which was no cause whereupon sentence might follow, seeing the confession was not subscribed by the party, and the clerk's affirmation in an inferior court ought not to be warranted to any sentence exceeding L. 40, for the pursuit was not referred to the parties' oath, whereby that the confession might be reputed to depend necessarily upon the judicial order of proceeding, but was a voluntary confession, which ought to be otherwise instructed than by the clerk's assertion. This nullity was also repelled, because instantly the obtainer of the sentence produced writ, which verified the summons, which the LORDS found sufficient to maintain the sentence, albeit the same was not mentioned in the decret, as the cause thereof, seeing the party could not oppone against that writ now produced. See PROCESS.

Act. *Russell.*

Alt. ———.

Clerk, *Scot.**Fol. Dic. v. 1. p. 502. Durie, p. 138.*

No 215.

1629. July 2.

L. BAMFF *against* CHAMBERLAIN of BOYN.

IN a suspension of a decret given by the Sheriff of Aberdeen, eight days after the Head Court at Pasch, which fell within the time of vacance, and so which was quarrelled, because it was done and dated in the vacance, without dispensation, and therefore null; the decret was sustained by the LORDS, because they found, that after holding of the Head Court, the Sheriff might at all times thereafter, albeit the time of the Head Court fell within the time of vacance, and might sit and hold courts without dispensation, seeing then in effect the time of vacance ceased.

Act. *Baird.*

Alt. ———.

Clerk, *Gibson.**Fol. Dic. v. 1. p. 502. Durie, p. 454.*