

tent before the Commissaries, as the defenders being an ecclesiastical court, were not subordinate to any civil one. No 282.

Fol. Dic. v. 3. p. 354. Fac. Coll.

* * * This case is No 85. p. 7465.

S E C T. III

Commissaries are limited that they cannot Judge in causes above a certain sum.

1605. *May 29.* M'LELLAN *against* M'LELLAN.

IN an action betwixt M'Lellan and M'Lellan, brothers, the LORDS found a decret given by the Commissary of Kirkcudbright, decerning the other three hundred three score merks, as the price of a horse, which the pursuer had referred to the defender's oath of verity, and in respect of his non-compearance the judge had referred to the pursuer's oath, to be null, by way of suspension, because the Commissaries had no power to proceed in any civil cause exceeding forty pounds by their injunctions, and therefore found the said Commissaries decret null.

Fol. Dic. v. 1. p. 505. Haddington, MS. No 777.

No 283.
A Commissary's decret, given in a civil cause, exceeding L. 40 Scots, was found null by exception, as being beyond the instructions.

1624. *February 6.* GORDON *against* M'HEUGH.

IN an action betwixt Gordon *contra* M'Heugh, the LORDS found a decret given by the Commissary of Wigton, decerning a party to pay the prices of certain victual, which he was obliged to deliver to the pursuer of that cause, to be null, by way of objection in the suspension then discussing betwixt the parties, because the same was in a matter civil, viz. for prices of victual, which was not proper to an ecclesiastic jurisdiction; and that it was supplied by alleging, that albeit, of its own nature, it was civil, yet seeing it was referred to the defender's oath, in that respect the Commissary was a judge competent. THE LORDS, nevertheless that it was referred to the defender's oath, found it null, because the decret was for a greater sum than whereon the Commissary could decern, the matter being civil, to wit, extending to 120 merks; for the LORDS found, that the Commissaries, in matters which were not ecclesiastic,

No 284.
Commissaries, in matters secular, cannot be judges to admit probation, other than by the defender's oath, except the value of the cause exceed not L. 40, Scots. If the matter be not ecclesiastical, and exceed L. 40, they

No 284.
 may judge in
 it, referring
 to the defen-
 der's oath,
 but the sub-
 ject must
 not exceed
 100 merks.
 If it exceed
 that sum, and
 be secular,
 the Commis-
 saries are not
 competent
 judges, al-
 though refer-
 red to oath.

could not be judges to admit any probation, but the defender's oath, except in matters which exceeded not the value of L. 40, within the which quantity they might receive probation by witnesses, and otherways, albeit the subject was not in a matter ecclesiastic; and if the matter were not ecclesiastic, and exceeded L. 40, they might also be judges thereto, the same being referred to the defender's oath, if the subject exceeded not 100 merks; but if it exceeded 100 merks, and was civil, albeit referred to oath, the Commissaries were not judges thereto; for if they were admitted to judge upon civil matters exceeding 100 merks, they might, upon pretext of referring of matters to the defenders oaths, draw all actions in before them which were absurd.

In this same above-written process, the LORDS found the Commissaries decret null, because it was given in time of the harvest vacance, and the decret bore not that it was given by virtue of a dispensation; and the LORDS would not sustain the answer made by the party, whereby he alleged, that the Commis- sary had dispensation, seeing they found that the decret ought to have made mention and proported the same, and so not bearing the dispensation, being given in August, was found null for that cause.

Act. *Beishers*.

Alt. *Cunninghame*.

Fol. Dic. v. 1. p. 505. Durie, p. 107.

* * Haddington reports this case :

IN an action betwixt Gordon of Tanister and M'Culloch, the LORDS found, that the Commissaries might not keep courts in vacance without the Lords dis- pensation; and if they sat by dispensation, their decreets given by that warrant should bear the same. It was farther found, that the Commissaries of Edin- burgh might not be judges in a civil cause of debt, upon pretext that the pursuer referred the summons to the defender's oath, if the sum exceeded an hundred merks; because, by that colour, all actions of debt might be drawn before them from other judges; and therefore the Lords found the decret given by the Commissary of Kirkcudbright, for six bolls of bear at L. 20 the boll, null.

Haddington, MS. No 2993.

No 285.
 A decree of a
 Commissary
 for more than
 L. 100, was
 sustained,
 because it
 was for a
 legacy.

1626. *July 12:*

TURNBULL *against* MATHISON.

IN a suspension raised by Turnbull against Mathison, of a decret obtained before the Commissaries of ———, for payment of L. 200, which was quar- relled in that suspension, because it exceeded L. 100, and so not subject to the Commissaries' jurisdiction; the decret was sustained, because the sum was