

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