

eations in particular, Stair says that they were confined to the Court of Session; L. 4. tit. 1. § 35. And § 36, he says, 'That the Lords do advocate from the Commissaries, and that the Commissaries of Edinburgh may reduce the decreets of inferior Commissaries;' which is agreeable to the act 1609, establishing the Commissaries of Edinburgh.

And as for appeals, it appears from the 19th article of the instructions to the Commissaries, that these were at that time in desuetude; and that the Commissaries of Edinburgh could not review the proceedings of inferior commissaries, otherwise than by a libelled summons of reduction.

'And accordingly it was found, That the Commissaries of Edinburgh have no power to advocate from inferior Commissaries.'

Fol. Dic. v. 3. p. 354. Sel. Dec. No 205. p. 272.

No 271.

S E C T. II.

Extent of the Jurisdiction of Commissaries.

1622. July 10. SILVERTONHILL against His SON.

THE LORDS found the Commissary of Glasgow judge in an action pursued by Silvertonhill *contra* his Son, to hear and see him decerned and ordained to subscribe a charter, because of his promise; which promise was referred to the son's oath.

Fol. Dic. v. 1. p. 505. Kerse, MS. fol. 175.

No 272.

1622. November 26. LIDDEL against DR ROB.

IN an action of suspension pursued by ——— Liddel, midwife in Aberdeen, against Dr Rob in Aberdeen, for suspending of a decret given in favours of Rob, against the said Liddel, by the Commissary of Aberdeen, decerning her to pay to the said Rob the sum of L. 80 Scots, which was modified by the Commissary, for the price of the curing of the said Liddel, and pains taken by the said Rob therein, as the said decret proported;—the LORDS found, in that same suspension, that decret null, as being given by the Commissary, who was not judge competent to that nature of action; albeit the party, obtainer of the decret, *alleged*, that the Commissaries have ever been judges to actions *super salariis medicorum*, of the nature whereof that action was; and that the

No 273.
The decree of a Commissary, modifying a sum to a physician for a cure, was reduced.

No 273. Commissaries have ever been in use to decide therein; and that the canon law allows the same; notwithstanding whereof, the LORDS found the decret null, as given *a non suo iudice*.

Act. *Mowat*.Alt. *Nicolson, elder*.

Clerk, ———.

Fol. Dic. v. 1. p. 505. Durie, p. 35.

* * * Haddington reports this case :

ONE called Rob, chirurgion in Aberdeen, obtained decret before the Commissary of Aberdeen against a woman there, for the sum of fourscore pounds, for curing her of a disease, she not compearing; she suspended the decret, *alleging*, that it was given *a non suo iudice*. It was *excepted*, That the Commissaries being ecclesiastic judges, were competent in causes *de salariis medicorum, philosophorum, et omnium professorum liberatum disciplinarium* by the canon law; and that bishops were competent visitors and censors of schoolmasters, physicians, &c. *Answered*, That, by the canon law, they were so; but, in Scotland, the Session, being judges in all civil causes, were only judges in this cause, being civil, for a sum of money; and that the canon law was only allowed in causes merely ecclesiastic. In respect whereof, the decret of the Commissary was declared null, and suspended simpliciter.

Haddington, MS. No 2677.

No 274.

1628. December 5.

REID against BROWN.

ONE in the time of his sickness, whereof he shortly died, having set down and written in his count-book the particular debts owing by him; one of the creditors, to whom he gave up himself in the said count-book to be owing 1000 merks, after his decease convenes the nearest of kin to the defunct before the Commissary of Lanark, to hear and see the hand-writ of the count-book to be cognosced to have been the proper hand-writ of the defunct, and that he was his debtor therein; and upon this pursuit he obtained sentence in that court; whereupon he having arrested some debts of the defunct's, and pursuing to make the same furthcoming; this sentence before the Commissary, cognoscing the hand-writ in that court, was found null, as not being a subject proper to that jurisdiction, and so it could not be a ground of this action.

Act. *Primerose*.Alt. *Russel*.Clerk, *Scot*.*Fol. Dic. v. 1. p. 505. Durie, p. 405.*