

acclaimed and decerned in his favours, to whom the same was left in legacy ; and so the Commissaries might judge thereon. In this same process, the Lords also sustained the decret given against one of the two executors of the defunct, albeit the other was not called, seeing the executor called, against whom decret was given, was sole intromitter, at least had intromitted with more than the sum contained in the decret extended to, and had not made payment to any other, neither was distressed by any other of the defunct's creditors. The like was decided before, as is marked, 23d July 1625, betwixt Mr Peter Hewat and Aitkin, No 71. p. 3878. ; but the reason specially respected, and moving the Lords in this decision, was in respect of the decret standing, which could not be taken away in this suspension so summarily. See SOLIDUM ET PRO RATA.

Act. Craig.

Alt. Stuart.

Clerk, Gibson.

Fol. Dic. v. 1. p. 506. Durie, p. 212.

1628. *January* 18. LO. LINDSAY *against* LA. AYTON.

No 286.

IN a suspension betwixt the Lo. Lindsay and the Lady Ayton, of a decret obtained before the Commissaries of St Andrews, for a house-mail in Cupar, pertaining to the Lo. Lindsay, possess by her ; the LORDS rejected that reason of suspension, bearing, that the sum decerned was an hundred and twenty pounds, and so out with the bounds of his proceeding, being a civil matter, viz. for house mails, albeit referred to the parties oath, seeing he could not judge by oath, where the matter exceeded forty pounds. ; notwithstanding whereof the decret was sustained, being for three terms of an house-mail, and so each term being forty pounds, the matter behoved to be respected as three several heads, and so in effect *totidem libelli*, albeit all were contained in one pursuit ; in this process, the LORDS found, conform to the custom observed, that the Commissaries of Edinburgh, in civil matters, which are referred to parties' oaths, cannot judge in matters where the same exceeds an hundred merks, and the other inferior Commissaries where the same exceeds forty pounds ; and that their decreets are null if they contain any more in civil matters, albeit referred to the parties oath.

Act. Stuart.

Alt. Ayton.

Clerk, Gibson.

Fol. Dic. v. 1. p. 506. Durie, p. 328.

. Spottiswood reports this case :

THERE was a decret obtained by my Lord Lindsay against the Lady Ayton before the Commissaries of St Andrews, for payment to him of L. 120, for three terms mail of a house in Cupar set to her. *Alleged*, That this being a

No 286. matter civil and profane, by the injunctions given to the Commissaries, they could not be judges in such cases, in things above L. 40. *Replied*, That she was convened for three terms mails, at L. 40 the piece, so that it behoved to be thought *tot sententiæ, quot capita in libello*. In respect of which reply, the allegiance was repelled.

Spottiswood, (COMMISSARIOT.) p. 38.

1629. *January 29.* HORSEBURGH *against* M'LEVAIN.

No 287. IN an action of tutor-counts, pursued before the Commissaries of Glasgow, the LORDS found, that the Commissaries were competent judges thereto, and refused to advocate the same to the Lords, upon that reason, that the Commissaries were not judges to such actions. See No 291. p. 7578.

Fol. Dic. v. 1. p. 506. Durie, p. 420.

1630. *January 15.* ALDCORN *against* KER.

No 288. A DECREET before the Commissary of Peebles, for the sum of L. 60, being quarrelled by suspension as null, because albeit it proceeded upon the defenders being holden as confest, yet the inferior Commissaries were not judges in matters referred to oaths above the sum of L. 40, and the Commissaries of Edinburgh in matters exceeding 100 merks, conform to their injunctions; notwithstanding whereof the decret was sustained.

Fol. Dic. v. 1. p. 505. Durie, p. 481.

* * * Spottiswood reports this case :

1630. *January 16.*—TURNBULL having obtained a decret against Ker, for payment of L. 60, before the Commissary of Peebles; this decret was suspended, because the Commissary could not be judge in a civil matter above L. 40. Yet the LORDS sustained the decret.

Spottiswood, (COMMISSARIOT.) p. 39.

No 289.
A decree of
a Commis-
sary was
sustained, in
which a mat-
ter was refer-
red to the

1634. *June 18.* RICHARDSON *against* MAXWELL.

AGNES RICHARDSON having obtained decret against Maxwell of Frier-corse, before the Commissary of Dumfries, decerning him to relieve the said Agnes Richardson of the sum of L. 80, which she had paid as cautioner for Maxwell's son, of the which cautionry and sum he had promised to relieve her; and also