

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 judice*.

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 judice*. 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.*

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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.*