

No 290. against the hability of the witnesses then, and therefore cannot now quarrel their testimonies, and that it was most proper for the Commissaries to cognosce upon slander or defamation, neither was his standing in order to repentance, but in order to restoring the party to his fame.

THE LORDS repelled the reasons, and sustained the decret in all points.

*Stair, v. 1. p. 598.*

\* \* \* Gosford reports the same case :

GLENCORSE being decerned by the Commissaries of Edinburgh in the sum of 300 merks, and to make public reparation by standing at the kirk door of Glencorse, and confessing his fault to the church on a Sunday, for scandalizing the said James, and calling him false knave, did suspend upon the incompetency of the judge, and that kirk sessions were the only judges competent, and could ordain that manner of satisfaction ; as likewise, that the mulct and fine was exorbitant, and more than an inferior judge could decern ; notwithstanding whereof, the letters were found orderly proceeded.

*Gosford, MS. No 104. p. 37.*

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1675. December 8.

No 291.

WRIGHT, and HAMILTON, her Spouse, *against* VEITCH.

CHRISTIAN WRIGHT, and John Hamilton, her spouse, pursues William Veitch, her tutor, before the Commissaries of Edinburgh, who proponed a declinator, and thereupon raised advocacy on this reason, That this being a tutor account, the Commissaries are not competent judges thereto ; for by the act of parliament, *anno* , erecting Bishops with the power of Commissaries, ' their jurisdiction is limited to matters consistorial, to proceed conform to the ' Bishop's injunctions, which are recorded in the books of sederunt,' and bear particularly, ' consistorial causes and no others, except small matters referred ' to oath, not exceeding L. 40.'

THE LORDS found the Commissaries had no such jurisdiction, and therefore advocated the cause.

*Fol. Dic. v. 1. p. 506. Stair, v. 2. p. 378.*

\* \* \* Dirleton reports the same case :

1675. December 9.—A GENERAL action of count and reckoning, at the instance of pupils and minors *post tutelam et curatelam*, against their tutors and curators, is not consistorial and competent to be pursued before the Commissaries, where the import of the action exceeds the sum and value to which the Commissaries may be judges ; and the pretence that there are diverse articles,

and none of them doth exceed the said sum, is of no weight, seeing the reply of *articulatus libellus* is only in the case where the debtor is pursued for diverse sums, which, in effect, resolves in diverse actions; whereas *actio tutelæ* is but one general action, and upon one ground, viz. The defender is liable as tutor and curator, whatever and how many soever the articles of intromission be; and, upon the ground foresaid, the pursuit before the Commissaries was advocated.

No 291.

*Dirleton, No 314. p. 154.*

Reporter, *Newbyth.*

\* \* \* This case is also reported by Gosford :

1675. December 11.—THERE being a bill of advocation for a pursuit, depending before the Commissaries, given in at the instance of John Hamilton and his Spouse, against William Veitch, for making count and reckoning of his intromissions with the said Christian's means and estate, as being tutor to her, *sine qua non*, upon these reasons, That it was a civil action, and not proper to the Commissaries, seeing all the principles of the civil law, whereupon *actio tutelæ et contraria* were founded, would fall under the debate and modification of expenses, and manner of probation, which were only proper to the Lords of Session, would necessarily fall under the interlocutors of this process; *2do*, That the libel did extend to twenty thousand pounds Scots, which was far above the sums whereupon the Commissaries are empowered to judge, conform to the 6th act of Parliament 20th King James VI. giving them only power to judge according to their injunctions, and in civil actions where the libel doth not exceed two hundred merks, unless the same be referred to the party's oath. It was *answered*, The pursuit being at a minor's instance, against the tutors, and she being confirmed executrix, the Commissaries were most proper judges; and albeit the libel did contain a greater sum, yet it was *articulatus libellus*, and no article did amount to any greater sum.—THE LORDS did advocate the cause from the Commissaries, as not competent judges, by their injunctions, and act of Parliament, the libel not being referred to the defender's oath.

*Gosford, MS. No 816. p. 84.*

\* \* \* The reverse was decided, Horseburgh against M'Levain, No 287. p. 7576.

1696. July 1.

MATHEW PATERSON and Others *against* ROBERT ROSS and THOMAS URQUHART.

HALCRAIG reported the competition between Mathew Paterson, and other creditors of James Cuthbert in Inveness, against Robert Ross and Thomas Urquhart there. *Objected* against Ross and Urquhart's adjudications, that they

No 292.  
An adjudication on a decree *cognitionis causa*.