

No 270. only be competently done by the Commissaries of Edinburgh at the first instance, agreeable to the act of Parliament 1609, and a decision 23d July 1624, Herries against Drumlanrig, *voce* TEINDS.

It was *answered*, That the act of Parliament as to that point was in desuetude, and the decision had not been followed for upwards of 100 years.

THE LORDS repelled the defence of the Commissaries of Edinburgh's jurisdiction.

Reporter, *Lord Cowper.* Act. *Alex. Hay.* Alt. *Ja Morison.*

Fol. Dic. v. 3. p. 354. Edgar, p. 159.

1763. February 18.

COMMISSARY OF ABERDEEN *against* COMMISSARIES OF EDINBURGH.

No 271.
The Commissaries of Edinburgh have no power to advocate causes from inferior Commissaries.

In a process of scandal and verbal injury, the Commissary of Aberdeen pronounced an interlocutory sentence, 'decerning the defender to appear in the court and to ask pardon of the pursuer, &c. and decerning him to pay a certain sum for damages and expenses.' The defender, dissatisfied with this sentence, presented a petition of appeal to the Commissaries of Edinburgh, praying, 'That the said interlocutor be reversed, and such other relief and indemnification be given him as to them shall seem meet.' The Commissaries of Edinburgh granted a deliverance upon this petition of appeal, 'Appointing the same to be intimated to the pursuer, or to his procurator at Aberdeen; and appointing the pursuer to give in answers within twelve days after the intimation.' And having thereafter resumed the consideration of the appeal, they gave the following deliverance: 'The Commissaries having considered the petition of appeal, with their interlocutor thereon, duly intimated, to which no answer has been given, they remit the cause to the Commissary of Aberdeen with the following instruction, 'that he yet allow a reasonable time to the defender for begging pardon of the pursuer, &c.'

The Commissary of Aberdeen, being advised that the Commissaries of Edinburgh have no power to take causes from his court, whether by advocacy or appeal, advocated this cause to the Court of Session, upon the single head of incompetency. And the bill of advocacy being reported to the Court, they appointed excerpts of the statutes and instructions concerning the jurisdiction of the Commissaries of Edinburgh to be laid before them, which being done, the following considerations occurred to the Judges at advising; the form of an appeal is contained in act 99. Parliament 1503, binding the appellant to find caution in the inferior court within a time specified. This form gave place to advocations which did not require such caution. And Stair bears testimony that appeals went out of use after the institution of the Court of Session, giving place to advocations, reductions, and suspensions. With respect to advo-

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.