

mously of opinion, that as the excess was occasioned merely by the expense of process and of extract, the prayer of the bill ought to be granted.

No 293.

Lord Ordinary, *Craig*.

D. D.

Fol. Dic. v. 3. p. 354. Fac. Col. No 33. p. 66.

S E C T. IV.

Of Assessors to the Commissaries.—Whether Commissaries must reside where their Courts are held. Where the Courts must be held.

1606. December 27. BURNET *against* COMMISSARIES OF EDINBURGH.

SAMUEL BURNET, by a supplication given in to the Lords, declaring that he was pursued by Margaret Gibb, before the Commissaries of Edinburgh, for adherence in respect of marriage, perfected betwixt them by faithful promise, and carnal dealing following thereupon; for probation thereof, she produced two very suspected witnesses, viz. her master, to whom she had been taverner; and being far in his debt for counts of wine, he saw no means so ready to obtain payment of that debt, as if she, becoming wife to the complainer, he might obtain payment of his penny; and the other witness was a servant boy of the said house, with whom she was suspected and slandered to have been hamlie. It was a dangerous matter for him, if any inconsiderate proceeding should be rashly used in that cause; and therefore desired that the Lords would either take to themselves the advisement of the process, or join some of their number to the Commissaries of Edinburgh, to the advisement thereof; conform to the which desire they gave commission to the collector and clerk of register, Cranstoun-Riddell, and Myrecairnye, or any three of them, and adjoined them to the Commissaries of Edinburgh, in advising the said process, which was altered the next day.

December 30.—THE LORDS having, upon the supplication of Samuel Burnet, adjoined four of their own number to the Commissaries of Edinburgh, for assisting them in advising the process depending betwixt the said Samuel and Margaret Gibb, for perfecting the marriage alleged promised by Samuel to her, with carnal dealing; thereafter the Commissaries complaining to the Lords, that the form would be slanderous both to the Lords and Commissaries, the Lords, by their deliverance, discharged the former commission, and declared, that in time coming they would not make any such ordinance, but would suffer the Commissaries to proceed in their own jurisdiction upon their own peril *in prima instantia*, unless they found manifest and just cause of advocacy.

Fol. Dic. v. 1. p. 506. Haddington, MS. Nos 1191. & 1194.

No 294.
It had been the practice to join some of the Lords of Session with the Commissaries, in judging of processes of adherence. But this was given up, and the Court of Session refused to interfere.