

SECT. XVII.

Form of Extracted Decrees.

No 321. 1623. *January 10.* M'DOUGAL *against* PRIOR of ARDCHATTAN.

IN a suspension raised by M'Dougal against the Prior of Ardchattan, the LORDS would not sustain the charges raised upon a decret of the Commissary of Bute, because the decret was subscribed by the Commissary in absence of his clerk; for the LORDS would not allow of such extracts, subscribed and extracted by the Judge; albeit the clerk of that judgment was absent for the time; seeing the office of the judge and clerk are distinct offices, and cannot be supplied the one by the other, and for that the clerk, if he had a necessary cause of absence, ought to depute, and supply his place, which cannot be supplied by the Judge.

Act. *Pymrose.*

Alt. *Mouat.*

Clerk, *Gibson.*

Fol. Dic. v. 2. p. 203. Durie, p. 41.

No 322. 1623. *January 10.* L. DIRLETON *against* L. EASTNISBIT.

IN a suspension betwixt Dirleton and L. Eastnisbit, the LORDS found a decret given by the Sheriff of Berwick null; for, in the because of the sentence, the same bears not that the summons was found relevant, and admitted to probation, and an term assigned to prove, which words they found it ought to have born, in special terms; and that it was not sufficient, albeit it bore, that the pursuer of that action proved, that the quantity acclaimed by him extended only to the special quantity decerned, within the which words, the defender alleged, was comprehended, that the summons behoved to be found relevant by the Judge *hoc ipso*; likewise, he offered to prove, by the act of litiscontestation, the same was found relevant, and admitted to probation, and divers terms of probation was deduced thereupon, which he offered to prove, by the acts of the process, and which was not sustained, seeing the because of the sentence bore not the same in express terms.

Act. *Nicolson, younger.*

Alt. *Craig.*

Gibson, Clerk.

Fol. Dic. v. 2. p. 203. Durie, p. 41.