

ordingly, it is laid aside by the instructions, except for sums within L. 40 : So far a branch of civil jurisdiction is communicated to the Commissaries ; and in actions of debt within L. 40, referred to oath, they now interpose, not as spiritual, but properly as civil judges. Taking then the matter in its true light, the jurisdiction of the Commissaries is not limited by the instructions, but a new jurisdiction bestowed upon them in actions of debt to the extent of L. 40 Scots ; with regard to sums beyond that extent, they have no jurisdiction more than the Court of Justiciary has in civil causes. But then this Court stands upon a singular footing, that private consent can bestow a jurisdiction upon it ; for so is expressly declared by the instructions ; and here is one instance of a prorogation in our law, similar to prorogations in the Roman law. Perhaps it may be the only instance in our practice of a jurisdiction created by consent ; but, supposing it the only instance, it removes the argument urged for the Commissaries, after which the authority of the instructions stands clearly against them, that being limited in civil causes to L. 40 Scots, they cannot pronounce a decree in absence for a greater sum.

“ Found that the Commissaries have no power to pronounce decrees in absence for any sum above L. 40 Scots.”

Fol. Dic. v. 3. p. 340. Rem. Dec. v. 2. No 111. p. 220.

SECT. IV.

Prorogation of the jurisdiction of a Judge, against whom there lies a personal objection. Prorogation of the jurisdiction of the Court of Session, in cases of which they are not judges in the first instance. Effect of proponing other defences after declinator is repelled.

1629. January 29. KELLIE against WINRAHAM.

A DECRET of deprivation, pronounced by the Bishop of Dunkeld against Robert Winraham, as one of the prebendaries of the Chapel-Royal, was sustained though it was quarrelled by way of suspension, because the bishop who was judge, was rebel at the giving thereof, and so had no person to judge ; which was repelled after sentence, the same not being proponed before the pronouncement thereof, l. 3. *D. De officio Pratorum.*—See PERSONA STANDI.

Fol. Dic. v. 1. p. 494. Durie, p. 419.

No 27.

No 28.