

missaries in Scotland, for which they pay a Contribution Yearly to the Commissaries of Edinburgh. But Bishops and Prelates of Inferior Commissariots are Not obliged to believe these Commissaries of any proportion of the said Contribution Money, tho they have a third of the Benefit of all Confirmations, as not being burdened therewith by the Kings Instructions, but only with the Chamber Mail Wax parchment and Paper, of which the Commissaries are free. 13 July, 1676 Commissary of Glasgow contra the Bishop of Glasgow.

When Prelacy in Scotland was abolished during Cromwells Usurpation, some Moved the suppressing of Commissariots as being Episcopal Courts, in which Great Abuses were Committed: And for supplying the Defect of such Courts, Urged, that a General Register might be kept of Testaments, as of births and marriages without Necessity of Confirmation, or that the Confirmation of testaments and the Decision of Confessorial Causes should be Committed to the Lords of Session, or to Sheriffs and other Inferior Judges. For John Nisbet of Dornochin Coult and Questions in law Cpl Bonds torid did Run down this Motion. Because of such Causes did not belong Originally ad Episcopatum Antientiam, But was first Committed Magistris Confes l. 42 C. de Episc. & Cleric. l. 18 l. 23 C. de testam. Therafter Defensoribus Civitatum l. 19 C. de the. Praesides Continuum C. de Episc. Antient. Thud was Assumed by the Bishops with the Permission of Princes, only in the later times upon protest that they were poor and favourable. Vid. Altare Damascen. pag. 462 Cap. 6. Tho the Jurisdiction of Commissaries is a temporal Jurisdiction flowing from the Sovereign, which might have been granted to any Subject as well as to the Bishops, and the heretack Right of the Commissariot of Angly was Actually given to the Earl of Angly. 2^d The Usefulness and Necessity of Continuing Commissary Courts as Peculiar Jurisdiction for

for Confessorial Causes, Appears from the Nature of these Causes, which require both an Exact and summary proceeding, and Great Skill in the persons who hear and Determine them. So that cannot conveniently be turned over to the Lords of Session, who have already too Much Important business upon their hands, to be able to goodly Dispatch to so favorable Causes, whereof Many are thereforely priviledged to be heard in the Vacation time: And far less are they to be Submitted to Sheriffs and other Inferior Judges who are not Much Versant in the Canon & Civil laws, a thorough Knowledge whereof is Required to a Right Decision of Confessorial Matters that was often found to be Miss and Confes in Apicibus Juris. 3^d Nor would the Keeping a General Register of Testaments Answer the use of Commissary Courts; because if Executors or Heirs of Kin find it their Interest to keep and Conceal them. It may be limited for such Registration, with Certification that the Testament should be Null in case of failure to Register in due time; because the Will of persons Deceased may be Unknown to Executors or Legataries or others having Most Interest, and so the Not Registration could not be Charged upon them; as the Not Registration of Births and Marriages are to be Imputed to the parties themselves who cannot be Ignorant of their own Deeds. 2^d When a person dies intestate, if there be not a Jurisdiction for Confirmation how could the Heir of Kin be Decorned and Confirmed Executors Datives? How should Licences be given or Goods of the Deceased provided to Minors and Orphans, where neither an Executor is Named, nor the Heir of Kin Praves to be Confirmed. 4^d As to Abuses Crept into Commissary Courts, these not being Essential arising from the Nature thereof, but Accidental, may be Reformed without subverting so Usefull Jurisdiction.