

No 3.
them, or sus-
pend or de-
prive them
from procur-
ing before
him

null and unlawful, yet ye will proceed against all law and justice; wherewith the Commissaries finding themselves highly injured, they ordained Mr John to pay twelve pounds of amand, and suspended him from procuring before them for a year; whereupon Mr John giving in his complaint to the Lords, and the Commissaries warned to answer to the complaint compearing, the matter was at length disputed upon these two heads: *First*, anent the power of the Commissaries in general, whether they might suspend, or deprive an advocate admitted by the Lords; and *next*, if this fact of Mr John Russell merited suspension therein. It was resolved, That the ordinar advocates admitted by the Lords, at their compearance in inferior courts, might so misbehave themselves, as the saids inferior judges might justly and lawfully suspend or deprive them from any farther procuring in their courts; and as to Mr John Russell's particular offence, the LORDS found it rash and indiscreet, and the Commissaries punishment very rigorous; and therefore calling in the saids parties, and the hail advocates who assisted Mr John Russell, as in a common cause concerning all their liberties, the LORDS admonished the advocates to be modest, and not to give occasion, by their contempt to judges, to unlaw, suspend, or deprive them; declaring also, that if any wrong was unjustly offered to modest advocates, the LORDS would censure and repair it; and as for Mr John Russell, the LORDS ordained him to be more reverent to the Commissaries in time coming, and to delete the words, which they found contumelious, in his defences; and ordained them to restore him to his liberty of procuration, and thereafter gave him up his supplication; because they would not have any record of that variance to remain.

Fol. Dic. v. 1. p. 24. Haddington, MS. No 1659.

1627. December 16. KIRKWOOD *against* INGLIS.

No 4.

ADVOCATES and writers being summoned by an incident diligence, as havers of writs; the LORDS found they might purge themselves by oath, that they had them not, nor had fraudulently put them away; and that no other kind of probation could be used against them.

*Fol. Dic. v. 1. p. 26. Auchinleck, MS.**

1528. November 14. BETSON *against* L. GRANGE.

No 5.
In an exhibi-
tion of writs,
an advocate
was obliged
to depone
as a witness,
as to the de-

In an action of exhibition of writs, Betson *contra* L. of Grange, the LORDS found, That the advocate compearing for the defender, in that same cause, might

* This MS. not in the Advocates Library.

be used by the pursuer, as witness to prove the summons, anent the defender's having of these writs libelled, and that they ought to depone thereupon, and that it was no competent objection to repel them *a testimonio*, that the defender was their client, *cui patrocinabantur in hoc eadem causa*, against whom they could not be compelled to bear witness, in that which their client had communicated to them in secret, and thereby to publish against him, and to his prejudice, that which was either spoken, or shown to them under trust, which, if they should be subject to do, by compelling them to depone upon their oaths as witnesses, they could not but incur a great suspicion of prevarication. And it was desired, that the Lords would consider the consequence and preparative thereof, which tends to force advocates to detect the secrets of their client's cause; which allegiance was repelled, and found, that they ought to be witness; in doing whereof, the LORDS found, that thereby they incurred no suspicion of prevarication; for though they were not holden to detect the secrets of the cause intrusted to them, which is to be understood, anent the counsel and advice given by them to the client, for the best and most lawful means of his defence, and prosecuting of his cause; yet that thereby they could not be freed, of being witness upon any thing libelled, and admitted to probation against their clients, being found relevant by the judge, consisting in their knowledge, and whereof possibly there was no other means of probation but by them.

No 5.
defender's having the writs, although he was the defender's counsel in the cause.

A&T. Nicolson & Lermouth.

Alt. Aiton.

Clerk, Hay.

Fol. Dic. v. 1. p. 25. Durie, p. 396.

1629. December 15. CORNELIUS PATERSON against CAPTAIN ALEXANDER.

A DECRET given before the Admiral against a stranger, being desired to be reduced, at the stranger's instance, albeit he was neither present within the country assisting the pursuit, nor a procuratory given by him to pursue, yet this action was sustained, seeing the same advocates compeared for him, and insisted in this reduction, (who were ordinary advocates in the Session) who compeared for him, and defended in the decret obtained against him, before the Admiral, desired now to be reduced: But it was ordained, that he should produce a procuratory authorizing the pursuit, before litifcontestation, and caution should be found to that effect.

No 6.
The Lords sustained action at a stranger's instance, though no mandate was produced, his advocate finding caution to produce it before litifcontestation.

A&T. Lawrie & Paip.

Alt. ———.

Fol. Dic. v. 1. p. 25. Durie, p. 474.

1630. March 23. The LAIRD of Wardis against his CREDITORS.

THE L. of Wardis craving protestation against a summons, pursued against him by his Creditors, who were infest in his lands of Wardis, and which lands were

No 7.
A defender craving protestation;