

they found it relevant; as it is circumstantiate, to infer that it was done of purpose to anticipate the advocacy, without necessity to prove otherways the purpose, and in that case declared, if the same were proven, they would turn the decret in a libel.

No 7.

*Fol. Dic. v. I. p. 26. Stair, v. I. p. 123.*

1666. February 20. — against HUGH M'CUULOCKH.

THE laird of Balnigoun being arrested in Edinburgh, for a debt due to a burgess, Hugh M'Cuulloch became caution for him in these terms, That he should present him to the diets of process, and should make payment of what should be decerned against him, if he did not produce him, within terms of law, *pedente lite*. Balnigoun raises advocacy, and at the same diet that the advocacy was produced judicially before the bailies, Hugh M'Cuulloch also produced Balnigoun, and protested to be free of his bond as cautioner. The bailies did not incarcerate Balnigoun, but refused to liberate Hugh M'Cuulloch, till they saw the event of the advocacy. The cause being advocate, and decerned against Balnigoun, who succumbed in an allegiance of payment; the pursuer craved sentence against him, and Hugh M'Cuulloch his cautioner.—It was answered for Hugh M'Cuulloch, That he was free, because he had fulfilled his bond, in presenting Balnigoun, and protesting to be free, albeit the bailies did not free him, that was their fault.—It was answered, That the advocacy being raised, hindered the bailies to incarcerate, because they might not proceed after the advocacy; and therefore the cautionry behoved to stand, otherwise all acts of caution, to answer as law will, might be so elided.

THE LORDS found the cautioner free; and found that the bailies, notwithstanding of the advocacy, might incarcerate the principal party, unless he had found new caution; for, seeing if he had found no caution, *a principio*, but had been incarcerate till the cause had been discussed, the advocacy would not have liberate him; and whensoever the cautioner produced him judicially, and protested to be free, he was in the same case as if he had been incarcerate, and therefore the bailies might have detained him in prison, notwithstanding of the advocacy, which did fitt the cause.

*Fol. Dic. v. I. p. 27. Stair, v. I. p. 360.*

1675. June 8.

THE LORDS yesterday did order, That in regard of the great abuse in desiring and granting advocations so frequently from inferior courts, to the great prejudice of the people, and the retarding and delaying justice; that therefore the

No 8.

After advocacy was admitted, the cautioner *judicis fitti*, having judicially produced the defender; Found the party might warrantably be imprisoned by the bailies, notwithstanding of the advocacy.

No 9.

The Lord Ordinary might refuse advocacy, but ought to