

No 9.
report to the
Court before
passing a bill.

Ordinary upon the bills may refuse to pass advocations, if he find cause; but that he ought to report all advocations before they be pass to the whole Lords.

Fol. Dic. v. 1. p. 26. Dirleton, No 260. p. 126.

1675. June 8.

KYLE against GRAY.

No 10.
Advocation
cannot be
pass of fums
under 200
merks, for
any reason of
iniquity.

THIS day the LORDS found, That advocations for fums of money within 200 merks, could not be pass upon any reason of iniquity.

Some of the LORDS in the case foresaid were of opinion, That advocations should not pass, though the process had been for a sum above 200 merks; because litifcontestation had been made in the cause; and after litifcontestation there can be no iniquity but by a decret, which ought to be suspended without advocation.

Castlehill, Reporter.

Fol. Dic. v. 1. p. 26. Dirleton, No 261. p. 126.

1676. December 12.

MARSHALL against HOLMES.

No 11.
An advoca-
tion produced
after decree
pronounc-
ed, but before
it was reduc-
ed into writ-
ing, rendered
the decree
null, as being
*spreto man-
dato.*

AN advocation being produced, after the judge had decerned, but before he had cleared and dictated the minute of the decret; which he did upon the Bench, immediately after production of the advocation:

THE LORDS found the decret null, as being *spreto mandato*; but in respect of the circumstances, and that the judge had decerned before, as said is, they turned it in a libel.

Thefaurer-depute, Reporter.

Gibson Clerk.

Fol. Dic. v. 1. p. 27. Dirleton, No 396. p. 195.

. Stair thus reports the same case:

CHRISTIAN HOLMES having obtained decret against John Marshall, before the Sheriff of Lanark; he suspends and raises reduction on this reason, that the decret is null, being *spreto mandato judicis* of the Lords, after an advocation produced judicially.—It was *answered, non relevat*, because the decret was pronounced before the advocation was produced.—It was *replied*, That by an instrument produced, taken judicially in the hands of the Clerk of Court, and subscribed by him, it is instructed, That the sheriff-depute, immediately after the calling of that cause, did only express generally, Decerns; and immediately after the advocation was produced, he did dictate the sentence to the clerk; so that before the judge was *functus officio*, by expressing the special tenor of the decret, the advocation being produced, the decret is simply null, as *spreto mandato*, and cannot be sustained, even as to the libel thereof, which is sometimes done by the Lords *ex gratia* in null decreets, but never in those that are *spreto mandato*.

THE LORDS found the reason relevant, and proven by the instrument under the hand of the same clerk who subscribes the decret, that before expression of the special tenor of the sentence, the advocacy was produced; yet seeing that the Sheriff might have doubted, whether the general expression was sufficient, not to admit the advocacy, THE LORDS only turned the decret into a libel.

Stair, v. 2. p. 475.

No 11.

1678. July 3.

BOID *against* SIMPSON.

MR ROBERT BOID, minister, having obtained decret against Robert Simpson, before the Commissaries of Glasgow, for defaming him as a perjured person; he suspended, on this reason, that the decret was null, because he being first pursued before the Bailie of Cunninghame, in this cause, he did raise advocacy; which doth not only advocate that cause as to that summons, or instance before that judge, but as to all other instances before that or any other inferior judge; and the citation, on the advocacy, put the charger in *mala fide* to pursue that cause any where, till the advocacy was discussed; which hath ever been sustained, otherwise advocations would import nothing, if a new instance, or another judge might elude the same; but, in this case, not only was the advocacy intimate to the charger, but produced to the Commissary, and a defence founded thereon, which was unjustly repelled.—It was *answered*, That if the advocacy had proceeded upon reasons, for which the Lords were only the proper Judges, and, therefore, craving the cause to be advocate to them, it would have stopped all inferior judges; but this advocacy, proceeding only upon incompetency of a bailie to discuss defamation or slander, which is proper to the Commissaries, it did not impede the party to pass from the process, and to insist before the Commissary.—It was *replied*, That whatever was the reason libelled in the advocacy, it brings the cause before the Lords; and many other reasons might have been added at the discussing; and the tenor thereof doth prohibit *all inferior judges to proceed in that cause*.

THE LORDS found, That the Commissary ought not to have repelled the defence upon the advocacy, and therefore allowed the defender to answer as in a libel, without annulling the decret; and because he had a reason against the probation, ordained the testimonies of the witnesses, before the Commissaries, to be produced.

Stair, v. 2. p. 627.

1679. December 16.

ALLAN *against* LUKE and M'KEAN,

ROBERT ALLAN having pursued Luke and M'Kean for a parcel of wine delivered by him, by their warrant, to John Guthry in Douglas; for proving where-

No 12.

Advocation, though proceeding upon the ground of the incompetency of a particular Judge, found to debar all other inferior judges, tho' they might be competent.

No 13.

Advocation sustained at the instance