

ADVOCATION.

1776. July 17. TURNER *against* JOHNSTONE.

IT is no doubt true, that an advocation is not competent, after extract ; yet, this day, where the Bailies of Glasgow had pronounced an iniquous interlocutor, against which a remedy was provided, by a remit with an instruction on a bill of advocation ; but which instruction the inferior court having in part disregarded, a new bill of advocation was presented ; but, before this new bill could be intimated, the decret was extracted ; and, as was alleged, in a precipitate manner, without allowing a Court day to intervene betwixt the decree and the sentence, conform to custom :—The Lords therefore, in this case, notwithstanding the extracted decret, remitted to the Ordinary to pass the bill of advocation.

1774. August 10. M'LEAY, Petitioner.

FORMERLY, it was thought that advocation was incompetent after sentence, though before extract : but now it is fixed, See Erskine, 683, that advocation is competent after sentence, if before extract. But, in an advocation of a decree of a Baron Court, this rule cannot apply. In these cases, there can be no extract ; a Baron Court is not a Court of record ; See Bank., B. 4, tit. 16, § 2. Therefore, as to a Baron decret, advocation is competent, until execution ; for, as to execution, advocation is no remedy : the only remedy there, is by suspension. So argued, Petitioner, M'Leay, 10th August 1774.

1776. November 14.

IN a suit depending before the Magistrates of Glasgow ; an advocation having been presented, and discussed, the cause was remitted *simpliciter*. The Bailies proceeded, and gave decret, not only for expenses of process before themselves, but for the expense of discussing the advocation before the Lords. The party against whom this decret was pronounced, presented a new bill of advocation ; which was reported by Lord Covington, 14th November 1776. “ The Lords thought the Baillies had no power to give the expenses before this Court, unless there had been a special instruction to that purpose ; but as the cause was remitted *simpliciter*, they recommended to the Ordinary, *quoad* these expenses, to pass the bill.”