1766. *November* 22.

WILLIAM WRIGHT and MARY GRAHAM, his Mother-in-law.

No 20.
Advocation competent after decree, if before extract. *See* No 7.

IT being objected to the competency of an advocation, that the proceſs was finiſhed before the Sheriff by a decree; and, therefore, that a ſuſpenſion was the only competent remedy: The objection was repelled upon the ground of utility, an advocation being a more eaſy remedy than a ſuſpenſion, and equally ſuſceptible of being remitted with an inſtruction. An extract indeed muſt bar advocation, becauſe after extract the cauſe cannot be remitted.

Fol. Dic. v. 3. *p.* 20. *Select Dec. No* 250. *p.* 322.

1775. *July* 6. EUPHAN CUNINGHAM *againſt* ROBERT CUNINGHAM.

No 21.
In a claim for a ſum below L. 12, a bill of advocation cannot be received, even to the effect of remitting with inſtructions. *See* No 18.

IN a queſtion between theſe parties, reſpecting the reparation of ſome houſes upon a farm, the Judge Ordinary having repelled the defender's plea againſt his being bound to repair the houſes, which the purſuer, in obedience to an order of Court, eſtimated at L. 6: 19: 11 Sterling, the defender applied to this Court for an advocation of the cauſe, or a remit, with inſtructions to aſſoilzie him from the article in queſtion. And the LORD ORDINARY, officiating on the bills, having 'refuſed the bill, but remitted to the Sheriff, with this inſtruction, that he aſ-'ſoilzie the complainer from the purſuer's claim, reſpecting the reparation of the 'houſes;' the purſuer reclaimed, inſiſting that the bill, and procedure thereon, was incompetent, the article diſputed being only L. 6: 19: 11 Sterling. The bill of advocation reſpected no other point in the proceſs; and, by 20th Geo. II. c. 43. no cauſe can be advocated for a ſum below L. 12: And the practice, in ſome caſes, of remits upon bills of advocation, in cauſes for ſmaller ſums, was found to be erroneous in a caſe decided 24th November 1767, Auld and Company againſt Wilſon*.

'The Court remitted to the Lord Ordinary to refuſe the bill of advocation, as incompetent.'

Act. *G. Clerk.* Alt. *Tytler.* Clerk, *Tait.*

Fol. Dic. v. 3. *p.* 20. *Wallace, No* 177. *p.* 94.

1776. *December* 18. STEELE *againſt* THOMSON.

No 22.
Advocation found competent, as involving a queſtion of right, altho'

TWO perſons being proprietors *pro indiviſo* of a meadow, a verbal agreement paſſed, by which the one let the ground to the other for three years, who laboured it, and reaped a crop of oats; the other refuſing, in reſpect the bargain had never been formally completed, the Sheriff, in a proceſs brought before him,

* Not found.—Examine General Liſt of Names.

No 22. the ſubject in diſpute below L. 12 in value.

found, That the crop muſt be divided, without recompence to the ſower for his labour.—In an advocation, the LORD ORDINARY having refuſed the bill, in reſpect the ſubject in diſpute, viz. the corn, was under L. 12 Sterling in value, the LORDS altered that judgment, as the diſpute involved a queſtion of right, and was not limited to the value of the crop. *Fol. Dic. v.* 3. *p.* 21.

1780. *March.* TOMLIE, Petitioner.

No 23.

IF the ſum is below L. 12, the Lords cannot advocate, even with conſent of parties. *Fol. Dic. v.* 3. *p.* 20.

1784. *December* 16.

WILLIAM HAMILTON and JOHN REID, *againſt* The CLERKS in the High Court of Admiralty.

No 24. Advocation, from the High Court of Admiralty, competent, in mercantile cauſes, at any time before extract.

WILLIAM HAMILTON and John Reid, inſtituted in the High Court of Admiralty, an action for the profits of a mercantile adventure, in which the Judge pronounced ſeveral interlocutors in favour of the defenders.

After the laſt of theſe had become final, the purſuers applied, by a bill of advocation to the Court of Seſſion; but the Clerks in the Court of Admiralty refuſed to tranſmit the proceſs until they obtained payment, or a compoſition for their dues of extract; and

Pleaded: Though with regard to ſentences pronounced by other Judges, it has been held, that advocation is competent at any time before extract, November 1766, Wright againſt Taylor,* the law is different in queſtions depending before the Court of Admiralty. As in caſes ſtrictly maritime, which are the proper ſubject of that juriſdiction, the ſentences of the Judge can be ſet aſide only by reduction; ſo it has been found, that even in thoſe of a mercantile nature, the parties, by voluntarily reſorting to that tribunal, have ſubjected themſelves to all the peculiarities attending it, as in the caſe of Cairns againſt Jackſon; Fount. 24th January 1699:† A deciſion which ought to be followed to the effect, at leaſt, of ſecuring to the officers of that Court their juſt emoluments, eſpecially where the attempt to advocate comes from the purſuer in the original action.

Anſwered: By ſubmitting their cauſe to the deciſion of the Judge-Admiral, in a caſe like the preſent, parties, it is true, confer juriſdiction on a Judge otherwiſe incompetent. But they do not, at the ſame time, convert a cauſe purely mercantile, in which the Judge-Admiral is poſſeſſed only of the ordinary powers, into one of a maritime nature, in which his proceedings can be brought under review by reduction alone. It was from not attending to this obvious diſtinction,

* The caſe probably meant is Wright and Graham, No 20. *ſupra.*

† Fountainhall, v. 2. p. 37. *See* JURISDICTION.