

No 7.  
the pursuer's  
counsel not  
entitled, with-  
out express  
authority  
from his  
client, to take  
a day to in-  
fist, with cer-  
tification of  
absolvitor if  
he then failed.

evicted by the Earl of Mar, whereupon Wardis had gotten regrefs against L. Balcolmy, and therefore the saids creditors craved regrefs to the lands of Balcolmy, according to their proportion of their wadset, against which summons, this protestation was craved; and the pursuers desiring a day to be assigned, at which day their procurators declared, that they were content, that if they infisted not at that day, that absolvitor should be given *simpliciter* from that pursuit, sicklike as if after protestation, they had been summoned to infist with that certification.—THE LORDS found, seeing the pursuer's self was not present, to take the day with that certification, that no such day could be taken by, or assigned to advocates, which might bind their parties, they not being summoned for that effect.

*Ast. Stuart & Aiton.*

*Alt. Nicolson & Lawrie.*

*Clerk, Hay.*

*Fol. Dic. v. 1. p. 25. Durie, p. 513.*

1666. February 1. —. against Mr JOHN and HENRY ROLLOCKS.

No 8.  
In an exhibi-  
tion of writs,  
the advocate  
and agent in  
the cause,  
were obliged  
to depone,  
their client  
being called.  
*See No 5.*

IN an exhibition of writs, it was *alleged*, That Mr John and Henry Rollocks, being advocate, and agent in the cause, were not obliged to depone in prejudice of their clients, or to reveal their secrets; but they ought to pursue their clients; for a servant, factor, or person intrusted with the custody of writs, ought not to be examined in prejudice of their constituent, unless it were as a witness.—It was *answered*, That their client was called.

In respect whereof, the LORDS ordained the defenders to depone concerning the having of the writs.

*Fol. Dic. v. 1. p. 25. Stair, v. 1. p. 347.*

1668. July 14. Mr DAVID FALCONER against Sir JAMES KEITH.

No 9.  
A party fined  
and imprison-  
ed, for revil-  
ing and  
threatening  
an advocate  
in the exer-  
cise of his  
office.  
*See No 29.*

MR DAVID FALCONER gave in a complaint against Sir James Keith of Caddam, that he being in the exercise of his office, informing the President to stop a bill of suspension, given in by Sir James Keith; Sir James did revile and threaten him, calling him a liar and knave, and saying if he found him in another place, he would make him repent what he said.

THE LORDS having received witnesses in their own presence, and finding it proven, sent Sir James to the tolbooth, there to remain during their pleasure, and fined him in 500 merks.

*Stair, v. 1. p. 552.*

\* \* \* There had been much variance in opinion, relative to the competency of appealing to the Parliament of Scotland from the Court of Session; in consequence of which the king had directed a letter, dated 19th May 1674, to the Court, declaring his disapprobation of such appeals. By that letter, certain advocates, who had abbetted appeals, were required to disavow them. They having refused to do so, some of them were, by sentences of the Lords, 24th June and 24th November 1674, 'debarred from their function.' Forty other advocates deserted the house on this account. They were cited to return, and having failed to do so, were, by sentence of the Lords, 3d July 1674, likewise debarred from exercising the office of advocate.—The King, by a letter of the 14th July 1674, approved of what the Lords had done; and, by another letter of 12th December 1674, his Majesty did declare, *in verbo principis*, 'That such of the said advocates as should not, betwixt and the 28th January 1675, make application to the Lords for re-entry, to be presented to his Majesty, in manner formerly prescribed, should never be re-admitted to that function thereafter; requiring the Lords forthwith to cause print and publish his royal pleasure thereon, by way of proclamation.' This proclamation gave occasion to the following case, reported by Lord Dirleton. The other proceedings in the matter are recorded in the Acts of Sederunt, p. 120. edit. 1790.

1675. *January 26.* JOINT PETITION of the ADVOCATES.

A JOINT petition was presented by the advocates that had withdrawn; whereby they did not expressly desire, that they should be re-admitted, but did hold forth that they were free of, and hated the very thought of sedition; and, that the Lords who did best know the reason of their withdrawing, would vindicate them to his Majesty; and that they were willing to serve with that freedom which their predecessors had formerly, and which, they conceived, was no more than was necessary for those of their station, in order to the interest of the people; that they acknowledged and were willing to submit to the just power of the Lords, as their predecessors had enjoyed the same, and desired that the petition should be transmitted to his Majesty as satisfactory. Some of the Lords thought, that the petition was altogether dissatisfactory, and should be thrown over the bar, being, as to the manner, in a joint and factious way; and, as to the matter, no ways satisfactory, insinuating a qualification of the Lords power, and their submission; and that the Lords pretended to a power which their predecessors had not, and that was not just.

Others of the Lords were of opinion, That whatever mistakes there might be as to the manner, It was hard upon that account to reject it: And that if the time was not so pressing (that which was appointed for addresses being to elapse the very next day) it might have been helped as to the manner, by giving intimation to the advocates, that it would not satisfy; but there being no time for that, and the certification being so high and heavy, viz. utter and perpetual