

No 12.

at the instance of the said creditors against the Lady; Mr David Dunmore advocate being cited, as a witness by the creditors; it was *observed*, That he could not be received, because he was an advocate, and could not be bound to depone upon his client's secrets; and that he was employed for the parties.—It was *answered*, That he had not been craved to depone upon any consultation or private advice, but upon the tenor thereof; the Lady having most maliciously destroyed her own double, and her husbands, of purpose that her husband's creditors, who were deeply engaged for him, might be defrauded; whereas it was proved by the contract of the husband, in contemplation whereof, the creditors did engage.—THE LORDS did ordain the said Mr David to depone upon the true tenor of the contract; seeing that could not concern any private advice or secret of his calling or employment.

Gosford, MS. No 826.

1676. January 21.

HOME against HOME.

No 13.

An advocate found obliged to answer summarily in an alimentary matter, not regarding his office.

HELEN HOME gave in a bill, desiring that Mr Patrick Home advocate, might be decerned to pay to her the sum of 2000 merks, which was all the means and portion she had by her father, in respect that Mr Patrick, by a tack set to him by his father, is introniter with the estate of Rentoun, for satisfying of the creditors: It was *answered* for Mr Patrick, that he could not be obliged to answer upon a bill, unless it had been in relation to matters in his office as an advocate; and, by the act of regulation, all processes must be inrolled, and come in by the roll.

THE LORDS repelled this allegiance, and ordained Mr Patrick to answer upon the bill, in respect that they are always accustomed to determine bills, and to discuss causes upon bills of suspension (where both parties appear) summarily, and likewise other bills that require present dispatch against persons in and about Edinburgh, who are cited upon the bill, and to answer before the Ordinary upon the bills, and so stop not the preference of solemn processes, which are discussed by the Ordinary upon the bench by the roll; and which is now more necessary than formerly, in respect that by the act of regulation, it is a considerable time ere a process under the signet can come in. And this case being alimentary, and the poor woman in great distress, the Lords sustained the bill.

Stair, v. 2. p. 403.

1676. December 7.

BALLANTINE against EDGAR.

No 14.

An advocate may appear for parties within the kingdom,

JOHN BALLANTINE having obtained a decret against Margaret Edgar, she suspends, and raises reduction on this reason, That she had right to the lands in question by liferent.—It was *answered*, That the reason was competent, and

omitted in a decret *in foro*, wherein Mr John Lauder compeared for the suspen-  
der, and proponed defences.—It was *replied*, That Mr John was willing to de-  
pone that he had no warrant, and appeared only at the desire of another advo-  
cate.—It was *duplicated*, That if the testimony of advocates be sufficient to take a-  
way decreets compearing, there can be no security by them.

THE LORDS repelled the allegiance of the advocate's offer to depone that he  
compeared without warrant, which, though it might make him liable for the  
party's damage, yet could not weaken the decret *in foro*.

*Fol. Dic. v. 1. p. 24. Stair, v. 2. p. 474.*

1677. February 14.

DUKE and DUCHESS of MONMOUTH *against* the EARL of TWEEDALE.

IN a reduction, raised at the instance of the Duke and Duchefs of Monmouth,  
of a decret arbitral pronounced by his Majesty, in anno 1667; whereby his Ma-  
jesty taking burden for the Duke and Duchefs, did decern that they should dis-  
charge the Earl of Tweedale of their relief and re-payment of the sum of  
L. 44,000 Scots, paid by Francis Earl of Buccleugh, as cautioner for the said  
Earl, and for his relief and payment had got a wadset from the Earl of Tweedale  
of his lands of Meggetland, wherein the Countefs of Buccleugh was infest as  
heir to her father, and this Duchefs as heir to the Countefs her sifter; and, by  
which decret, both parties were ordained, and accordingly did discharge others,  
of all clags and claims which either of them could lay to others charges. Upon  
this reason, that the Duke and Duchefs were then minors when they did sub-  
mit, and granted a discharge of their interest, and being enormly hurt and  
leasid thereby, and by the decret arbitral it was null in law and ought to be  
reduced, and they ought to be reponed against the same, and put in the same  
condition they were in before the submission. The LORDS having appointed that  
the pursuers procurators should condescend upon the particular points of the le-  
sion; they did *allege*, That before they were obliged to insist upon a particular  
condescendence, they ought first to have the Lords interlocutor upon this point,  
that the Duke and Duchefs having a clear and absolute right for their relief of  
cautionry, and that by transaction and submission the same being *funditus* taken  
away, and nothing given in place thereof, but a right to the lands of Hassen-  
dean, whereof the Earl of Tweedale was not in possession, but the same was  
only debateable in law, and controverted by many persons who had a right to  
these lands, and were still in possession thereof; as likewise, that the Earl of  
Tweedale's claim was only for pretences due to his Lady for a part of her fa-  
ther's executry, and of her brother David's and Lady Mary's her sifter, which  
could not be done in law, and was never so decerned, but were naked pretences;  
and therefore, they craved, that upon that general ground, the Lords would re-  
pone them against the submission and decret. It was *answered* for the Earl.

No 14.  
without pro-  
ducing a man-  
date; should  
he even ap-  
pear without  
authority,  
the decree is  
good, though  
he may be  
liable in the  
parties dam-  
age.

No 15.  
A decret ar-  
bitral being  
challenged by  
reduction, as  
to the *enorm*  
*lesion* of a mi-  
nor, party in  
the submit-  
sion; it was  
not sustained  
as homologa-  
tion, that the  
pursuers pro-  
curators, in an  
action, upon  
the decret ar-  
bitral against  
third parties,  
had made  
some judicial  
steps, unless  
there had  
been a *special*  
mandate for  
the compear-  
ance.