

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