

No 124. nor remit it back to the Sheriff, but referred the same to the Justice-General, it being for theft-boot and criminal, founded upon old acts of parliament.

Newbyth, MS. p. 58.

1675. *June 25.*

A. against B.

No 125.

Causes which resolve into a competition upon double rights may be advocated, although no intricacy be alleged.

UPON a report made to the Lords concerning an advocation, upon that reason, that there was a competition in the case upon double rights; it was debated among the Lords, Whether the cause being undoubtedly competent before the inferior Judge, the pretence, that there was a competition of double rights, should be a relevant ground of advocation; and some of the LORDS were of opinion, that in the general to advocate upon that reason, it were hard, seeing inferior Judges their jurisdiction as to causes competent before them, is founded upon their rights; so that they have as good right to the same as to any other property: And in removings and actions for mails and duties, and others such real actions, when a defence is founded upon a right, or when parties compear for their interest, and produce rights, it may always be pretended, that the question is anent double rights; so that the jurisdiction of inferior Judges may be altogether evacuated, and the LORDS, who have scarce time to decide causes that are proper before them, should be cumbered with processes that may and ought to be determined by an inferior Judge, contrary to the acts of parliament, and in special the 39th act of Queen Mary, her 6th parliament, and the 5th act of his Majesty's 3d parliament, 3d session, discharging the advocation of causes, whereunto inferior Judges are expressly appointed Judges. But if it should be represented and appear that there is intricacy in such causes, wherein there may be question of double rights, the Lords in that case may advocate; but upon the pretence of double rights, as to which it may be there is no difficulty, there ought to be no advocation. Yet it was urged by ———, that the Lords were in use to pass advocations upon the reason foresaid; and albeit the pretence of custom not being verified, and, though verified, being against law, ought not to be put in the balance with express laws, founded upon good reason and common law, yet the bill was passed.

Reporter, *Redford.*

Fol. Dic. v. 1. p. 497. Dirleton, No 279. p. 136.

1680. *December 19.* M'LELLAN *against* The BISHOP of DUMBLANE.

No 126.

The Court advocated a cause for church censure, nem.

THE Bishop of Dumblane, as Dean of the Chapel Royal, and Minister of the church of Holyroodhouse, having convened before him Thomas M'Leilan, beadle of the church, upon information of several scandalous miscarriages, he obtained advocation passed by the Ordinary upon the bills, whereupon the

Bishop supplicated the Lords to recal the advocation, as being unwarrantably passed, whereby church censure was hindered, and would be of evil example and discouragement to the church, if church censures for scandal were advocated to the Lords, not being the subject of their jurisdiction. It was *answered*, That the Lords have a general jurisdiction directive of all the judicators ordinary, civil or ecclesiastic, and they may, and do ordinarily advocate criminal causes and processes from the Admiral, and confirmations of testaments, though the Lords cannot judge these things in the first instance, as they are the King's Council in matter of law in private rights; so that if there be incompetency, or inordinate processes, they may advocate from these courts, and may remit it to others nominated by the Lords, in place of these judges, if they be proved to have malversed; and if the bishop of one diocese, or minister of one parish, should summon persons without that diocese or parish to be censured for scandal, there could be no other remedy but to advocate to the Lords, and to remit to the competent judge. But there is much more in this case; this beadle having a gift from the King to be beadle, and not chosen by any church-man upon the King's presentation, in which case churchmen might depose those whom they had instituted; but the design of this censure is to depose the beadle, and to take away the King's gift.

THE LORDS remitted the cause to the Bishop and Clergy, as to the church censure, without prejudice to the King's beadle of his gift, as accords.

Fol. Dic. v. 1. p. 497. Stair, v. 2. p. 819.

No 126.

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Dean of the
Chapel Royal,
and remitted
it to the
bishop and
clergy.

1696. June 5. ALEXANDER against SHERIFF OF INVERNESS.

MR ALEXANDER, minister at Glasse, being pursued before the Sheriff of Inverness, for intruding into that church, presents a bill of advocation, on this reason, that he has an act of the Privy Council, giving him the protection of the Government, and allowing him to continue at that church; and by the 22d act 1695, intruders, before the date of the act, are only convenable before the Privy Council; and sheriffs and other inferior judges are only authorised to execute the act against such as should intrude thereafter. THE LORDS advocated the cause to the Privy Council, and not to themselves, the competency of judicatories being a point of civil right only determinable by the Lords, even as they will advocate to the Justices, &c.

Fol. Dic. v. 1. p. 497. Fountainhall, v. 1. p. 718.

No 127.