

the brieves thereafter was eluforie of the former difcharge, and was deduced *fpreto mandato*, and therefore null.

No 4.

A&C. *Ayton, Stuart & Craig.*

Alt. *Hope & Nicolfon.*

Clerk, *Gibfon.*

Fol. Dic. v. 1. p. 27. Durie, p. 74.

1627: July 18. GAVIN STEWART *against* his PARISHIONERS.

IN a fufpenfion betwixt *contra*, a decret being quarrelled as null, becaufe it was pronounced and dated after the caufe therein contained, was by the Lords' letters and fummons of advocation advocated, and after the party obtainer thereof, was fummoned by the faid fummons of advocation, to compear before the Lords, and albeit the judge was not difcharged to proceed, whereby it might be alleged he was in probable ignorance of the advocation, and fo might lawfully proceed in the caufe, the advocation thereof never being intimate to him; yet the fufpender *alleged*, That that could furnifh no excufe to the party, who knew of the advocation, and who, after the fame was intimate to him by citation, as faid is, can never be found to have done *bona fide*, in infifting in that action before the judge thereafter; but the decret ought to be found null, as done and infifted on by him *contra mandatum judicis*, which he could not mifknow. This reafon was not fufained; but the decret was approved, notwithstanding of the advocation and citation of the party, obtainer thereof, feeing the judge was not difcharged, who not being acquainted legally with the advocation, cannot be repute to have contemned the authority of the Lords.

Fol. Dic. v. 1. p. 27; Durie, p. 311.

* * Spottifwood reports this cafe thus :

Mr Gavin Stewart having obtained a decret againft his parifhioners of Dal-mellington, before the Commiffary of Glasgou; they fufpended upon this reafon, That the decret was given *fpreto mandato judicis*, they having raifed an advocation before the giving thereof, the party cited and the Commiffary and clerk fummoned.—*Answered*, That if any advocation was raifed, the fame was never intimate to the judge fitting in judgment, but only at his dwelling-houfe.—THE LORDS, in refpect that the Commiffary and party were both in *bona fide* to proceed, the judge not being difcharged in judgment, found the letters orderly proceeded.

Spottifwood, (ADVOCATION.) p. 11.

No 5.

A decret of an inferior court fufained, after letters and fummons of advocation, executed againft the party, but not againft the judge.