

be used by the pursuer, as witness to prove the summons, anent the defender's having of these writs libelled, and that they ought to depone thereupon, and that it was no competent objection to repel them *a testimonio*, that the defender was their client, *cui patrocinabantur in hoc eadem causa*, against whom they could not be compelled to bear witness, in that which their client had communicated to them in secret, and thereby to publish against him, and to his prejudice, that which was either spoken, or shown to them under trust, which, if they should be subject to do, by compelling them to depone upon their oaths as witnesses, they could not but incur a great suspicion of prevarication. And it was desired, that the Lords would consider the consequence and preparative thereof, which tends to force advocates to detect the secrets of their client's cause; which allegiance was repelled, and found, that they ought to be witness; in doing whereof, the LORDS found, that thereby they incurred no suspicion of prevarication; for though they were not holden to detect the secrets of the cause intrusted to them, which is to be understood, anent the counsel and advice given by them to the client, for the best and most lawful means of his defence, and prosecuting of his cause; yet that thereby they could not be freed, of being witness upon any thing libelled, and admitted to probation against their clients, being found relevant by the judge, consisting in their knowledge, and whereof possibly there was no other means of probation but by them.

No 5.
defender's having the writs, although he was the defender's counsel in the cause.

A&C. Nicolson & Lermouth.

Alt. Aiton.

Clerk, Hay.

Fol. Dic. v. 1. p. 25. Durie, p. 396.

1629. December 15. CORNELIUS PATERSON against CAPTAIN ALEXANDER.

A DECRET given before the Admiral against a stranger, being desired to be reduced, at the stranger's instance, albeit he was neither present within the country assisting the pursuit, nor a procuratory given by him to pursue, yet this action was sustained, seeing the same advocates compeared for him, and insisted in this reduction, (who were ordinary advocates in the Session) who compeared for him, and defended in the decret obtained against him, before the Admiral, desired now to be reduced: But it was ordained, that he should produce a procuratory authorizing the pursuit, before litifcontestation, and caution should be found to that effect.

No 6.
The Lords sustained action at a stranger's instance, though no mandate was produced, his advocate finding caution to produce it before litifcontestation.

A&C. Lawrie & Paip.

Alt. ———.

Fol. Dic. v. 1. p. 25. Durie, p. 474.

1630. March 23. The LAIRD of Wardis against his CREDITORS.

THE L. of Wardis craving protestation against a summons, pursued against him by his Creditors, who were infest in his lands of Wardis, and which lands were

No 7.
A defender craving protestation;

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.