

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.

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.

1666. February 1. —. against Mr JOHN and HENRY ROLLOCKS.

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.