

No 13.  
of the puruer  
of a process,  
on account of  
iniquity in  
the Judge.

of, he produced a decret at the instance of Luke and M'Kean against Guthry, upon that same narrative, before the Commissary of Lanark, decerning him to pay the wine, and relieve them; yet the Commissary of Glasgow would not sustain the decret, unless Allan proved that the process before the Commissary of Lanark was pursued by Luke or M'Kean, or by their warrant; whereupon Allan raised advocation, at his own instance, before the Commissary of Glasgow, upon iniquity, with a reduction of the Commissary's interlocutor.

THE LORDS found, That a decret of the Commissary of Lanark was probative; and that the Commissary of Glasgow should have sustained the same, unless collusion had been positively offered to have been proven by the oath of Luke or M'Kean, or *per membra curiæ*, that the whole affair was carried on by Allan, and not by them.

*Stair v. 2. p. 725.*

1686. March 24.

MEAN against M'NEIL.

No 14.  
A party who  
had been re-  
poned against  
a decree, and  
allowed time  
to give in de-  
fences, hav-  
ing advocat-  
ed; this  
found irregu-  
lar, and the  
cause remit-  
ted.

ROBERT MEAN, postmaster, gave in a bill against one M'Neil, bearing, that he was pursuing him, before the bailies of Edinburgh, for his house-mail; and, after he was decerned, he craved to be reponed; and the bailies having superfeded extract for a time, that he might give in his defences, he, instead thereof, steals out an advocation, and produces it; which also contains an advocation of any removing Robert should pursue against him, though he was not yet warned.—THE LORDS found it irregular in both its parts, and therefore annulled the advocation as to the removing, and remitted the other action back to the bailies.

*Fol. Dic. v. 1. p. 27. Fount. v. 1. p. 409.*

1704. July 11.

ISABEL STIRLING against HAMILTON of Grange.

No 15.  
A cause ad-  
vocated from  
the Commis-  
saries as to a  
single point,  
regarding the  
admissibility  
of witnesses,  
and allowed  
to proceed as  
to the other  
points.

ISABEL STIRLING pursued Hamilton of Grange, before the Commissaries of Edinburgh for adherence, and offered to prove she was lawfully married to him, and had born him children; and yet he had gone and married another wife. The Commissaries admitted her marriage to probation; and she adducing her father, brothers, and sisters, as witnesses, it was *objected*, That, by their propinquity of blood, they were inhabile to depone in her favour. *Answered*, The marriage being private, there was *penuria testium*, and no others were present.—*Replied*, clandestine marriages are not to be encouraged; and if people will go on in that manner, they ought at least to adhibit indifferent unconcerned witnesses.—The Commissaries repelled the objection, and admitted them *cum nota*.—On this Grange gave in a bill of advocation to the Lords, complaining of their iniquity in receiving such partial witnesses. Some of the Lords thought the Commissaries being sole judges, in the first instance, of divorces and adherences, they should