field cannot be possessed in runrig. How can I vary the property? Great estates may have belonged originally to one proprietor; it would be dangerous to inquire what was joined originally if now separated.

Diss. Barjarg, Coalston, Pitfour and Gardenston.

1766. *November* 22. WILLIAM WRIGHT, Tenant in the Leekeropt, and MARY GRAHAM, his Mother-in-law,—*Petitioners.*

ADVOCATION.

Any time before extract, Advocation is competent, though after pronouncing a decree.

[Kaimes's *Select Decisions*, p. 322; *Dictionary*, 375.]

IN an action of fine, assythment, and damages, before one of the Sheriff-substitutes of Perthshire, at the instance of the petitioners against Catherine Taylor, the Sheriff pronounced a judgment in their favour.

Catherine Taylor, without reclaiming, appealed to the Circuit Court, but afterwards dropt her appeal.

She then presented a bill of advocation, which was passed.

At discussing this advocation, the original pursuers objected to its competency, in regard that the judgment of the Sheriff, not having been reclaimed against, had become final.

On the 26th July 1766, the Lord Kennet, Ordinary, repelled the objection that the advocation is not competent, in respect of the answer, that the decreet was not extracted when the bill of advocation was presented and past.

On the 13th November 1766, he adhered.

Wright and Grahame put in a reclaiming petition, and pleaded in manner following:—

By the ancient practice of Scotland, advocations were used for the sole purpose of making inferior judges accountable *ob denegatam justitiam:* even the interlocutory sentences could not be brought under review except by appeal. Those appeals proved inconvenient; and, in their place, advocations for correcting interlocutory sentences were admitted. But further than this, practice has not gone. A cause depending before an inferior court may be removed into the Court of Session. A cause concluded, must be brought under review by suspension, reduction, or appeal. Lord Stair says, p. 551, § 534, that the remedy of advocation hath no place after a definitive sentence; and agreeable to this is universal practice. When an inferior judge pronounces a sentence on the merits of the case, of which the party means to complain by advocation, a reclaiming petition is always preferred, for the sole purpose of keeping the action dependant.

The style of the letters of advocation prohibits the Judge to proceed in the cause. This intimates, that the cause is depending. But if he has pronounced judgment, and if no reclaiming petition is offered, he cannot proceed were he

so inclined. If an advocation, in such cases, were competent, the style of the letters would be inept.

That the decreet was not extracted, does not vary the cause. When a sentence is pronounced, and is not reclaimed against, the Judge is *functus officio*. The extract is a copy of that judgment, which it belongs to the clerk to make out whenever the party demands it. This may be done after the lapse of any number of years, without a wakening or the interposition of any judge. An advocation cannot be received after sentence, though before extract, because *sententia definitiva ultimus actus judicis*, and the extract is but the clerk's part; *Lamington* against *Home of Kaimes*, 10*th July* 1662, observed by Stair.

It was understood, that an advocation in the circumstances of the present one was established in practice; and therefore,

On the 22d November 1766, the Lords adhered.

For the petitioners, A. Rolland.

1766. *November* 27. ROBERT DEWAR, Glazier in Edinburgh, *against* PATRICK MILLER and GIBSON (or Gibbon) and BALFOUR, in Company, all Merchants in Edinburgh.

SOCIETY.

The acting partner of a company, by a bill under the firm of the company, for money borrowed, binds the company.

[*Faculty Collection, IV.* 63; *Dictionary*, 14,569.]

1st July 1763, Messrs Miller, Gibson, and Balfour, together with John Weir, entered into a contract of copartnery for carrying on the linen trade. By the contract it was provided, that the trade should be managed by John Weir, in name, and by the firm of John Weir and Company, for which he was to have a salary of £80 *per annum*, besides the expense of clerks: that the capital stock should be £2400, one-half to be advanced by Weir, one-fourth by Miller, and one-fourth by Gibson and Balfour: that any further sums necessary for carrying on the trade, should be advanced by the partners according to the proportions aforesaid: that a regular book should be kept, and be patent on all occasions for the inspection of the partners: that John Weir should not be concerned in any other business, with any person whatever, without the consent of all the partners, nor make any sale or purchase exceeding £100 sterling, without the consent of one of the partners; that he should not borrow any money under their firm, without the previous consent of all the parties, under the penalty of half of the money so borrowed.

It was also provided, "That, whatever other rules and regulations, or alterations of the articles, shall be by the partners judged useful and necessary for the better carrying on the affairs of the company, and shall be inserted in the journal, and signed by them, or which shall be agreed to by any other writing under