No 22. the ſubject in diſpute below L. 12 in value.

found, That the crop muſt be divided, without recompence to the ſower for his labour.—In an advocation, the LORD ORDINARY having refuſed the bill, in reſpect the ſubject in diſpute, viz. the corn, was under L. 12 Sterling in value, the LORDS altered that judgment, as the diſpute involved a queſtion of right, and was not limited to the value of the crop. *Fol. Dic. v.* 3. *p.* 21.

1780. *March.* TOMLIE, Petitioner.

No 23.

IF the ſum is below L. 12, the Lords cannot advocate, even with conſent of parties. *Fol. Dic. v.* 3. *p.* 20.

1784. *December* 16.

WILLIAM HAMILTON and JOHN REID, *againſt* The CLERKS in the High Court of Admiralty.

No 24. Advocation, from the High Court of Admiralty, competent, in mercantile cauſes, at any time before extract.

WILLIAM HAMILTON and John Reid, inſtituted in the High Court of Admiralty, an action for the profits of a mercantile adventure, in which the Judge pronounced ſeveral interlocutors in favour of the defenders.

After the laſt of theſe had become final, the purſuers applied, by a bill of advocation to the Court of Seſſion; but the Clerks in the Court of Admiralty refuſed to tranſmit the proceſs until they obtained payment, or a compoſition for their dues of extract; and

Pleaded: Though with regard to ſentences pronounced by other Judges, it has been held, that advocation is competent at any time before extract, November 1766, Wright againſt Taylor,* the law is different in queſtions depending before the Court of Admiralty. As in caſes ſtrictly maritime, which are the proper ſubject of that juriſdiction, the ſentences of the Judge can be ſet aſide only by reduction; ſo it has been found, that even in thoſe of a mercantile nature, the parties, by voluntarily reſorting to that tribunal, have ſubjected themſelves to all the peculiarities attending it, as in the caſe of Cairns againſt Jackſon; Fount. 24th January 1699:† A deciſion which ought to be followed to the effect, at leaſt, of ſecuring to the officers of that Court their juſt emoluments, eſpecially where the attempt to advocate comes from the purſuer in the original action.

Anſwered: By ſubmitting their cauſe to the deciſion of the Judge-Admiral, in a caſe like the preſent, parties, it is true, confer juriſdiction on a Judge otherwiſe incompetent. But they do not, at the ſame time, convert a cauſe purely mercantile, in which the Judge-Admiral is poſſeſſed only of the ordinary powers, into one of a maritime nature, in which his proceedings can be brought under review by reduction alone. It was from not attending to this obvious diſtinction,

* The caſe probably meant is Wright and Graham, No 20. *ſupra.*

† Fountainhall, v. 2. p. 37. *See* JURISDICTION.

that the determination, quoted on the other ſide was given, from which indeed it would not merely follow, that the clerks in the Court of Admiralty could not be compelled to deliver, without a compoſition, the papers lodged in actions of a commercial nature, but that the remedy, by advocation, was there altogether inadmiſſible. No 24.

THE LORDS found, 'That the clerks in the Court of Admiralty were obliged, without any compoſition, to tranſmit the proceſs to the Court of Seſſion.'

Lord Reporter, *Ankerville.* Act. *Geo. Fergusson.* Alt. *Solicitor-General Dundas.*
Fol. Dic. v. 3. *p.* 20. *Fac. Col. No* 184. *p.* 289.

Craigie.

1795. *February* 14.

ROBERT M'INTOSH, *againſt* ANNE MARIA BENNET and JOHN B. WILLIAMSON.

No 25.
An advocation is competent where the libel concludes for more than L. 12 Sterling, although the ſum awarded ſhould be leſs.

MACINTOSH brought an action before the Sheriff of Edinburgh, againſt Mrs Bennet and Williamſon, concluding for L. 21 : 14s. beſides expence of proceſs.

The Sheriff having found the defenders liable for L. 9 : 2s. Sterling, and L. 1 : 10s. of expences, and the expence of extracting the decree, they preſented a bill of advocation, which the Lord Ordinary refuſed as incompetent, becauſe the ſum awarded, excluſive of expences, did not amount to L. 12 Sterling.

In a reclaiming petition, the defenders contended, That the act 1663, c. 9. prohibited advocations only where the ſum, *concluded for in the libel*, did not amount to 200 merks; and that the 20th Geo. II. c. 43. § 38. made no alteration on that ſtatute, further than augmenting to L. 12 Sterling, the ſum required to render this mode of review competent; Stair, b. 4. tit. 37. § 4.; Fol. Dic. vol. 3. p. 20. 11th February 1761, Marquis of Lothian againſt Oliver and Fair, No 19. *ſupra*; 11th December 1791, Roberts againſt Duncan*.

On adviſing the petition, with anſwers, it was

Obſerved, That as the right of bringing a cauſe under review belongs, in all caſes, equally to the purſuer and defender, it muſt be the ſum in the libel which aſcertains the competency of an advocation; for otherwiſe a purſuer, in conſequence of an inferior judge awarding him a ſum under L. 12 Sterling, might be deprived of this mode of redreſs, although what he ſued for, and was by law entitled to, greatly exceeded that amount.

The Court found the bill of advocation competent.

Lord Ordinary, *Henderland.* Act. *Hagart.* Alt. *Connel.*
Davidſon. *Fol. Dic. v.* 3. *p.* 20. *Fac. Col. No* 157. *p.* 360.

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* In this caſe, not collected, the deciſion was ſimilar to that in the caſe of M'Intoſh againſt Bennet.