

## ADVOCATION.

1607. February 24. LATHOKER *against* LORD OLIPHANT.

LATHOKER charged Oliphant upon a decret of the Commiffary of St Andrew's, to pay to him the price of certain farms, whilk the said Oliphant fufpended, *alleging*, That the decret was null, as given *spreto mandato judicis*, in fo far as the judge was difcharged by an advocacion, and notwithstanding thereof proceeded.—Against this reason it was *excepted*, That the raifer of the advocacion paff in effect from it; becaufe, after the raifing thereof, the party had compeared in diverfe diets of the proces, and given in defences and eiks; and fo, in effect, had confented in the judge.—It was *answered*, That nothing could take away the advocacion, but the exprefs renunciation of the party; and therefore, feeing the judge had contemned the Lords command, the compearance of the party, after the advocacion, and the judge difcharged, could not make his proceedings lawful.—In refpect whereof, the LORDS repelled the allegiance, and found the reason of the fufpention relevant.

*Fol. Dic. v. 1. p. 27. Haddington, MS. No 1327.*

1611. November 19. LORD SANQUHAR *against* CHRICHTON of Ryhill.

AN action being purfued by my Lord Sanquhar before the fheriff depute in Nithfdale, againft William Chrichton of Ryhill, for cutting of the faid Lord's green wood: The fame was advocated to the LORDS directly againft the tenor of the act of Parliament anent cutting and deftroying of woods.\*

*Fol. Dic. v. 1. p. 28. Haddington, MS. No 2300.*

1613. July 18. JAMES CRANSTON *against* SIR GEORGE HOME.

THE LORDS found a decree or retour null, *ope exceptionis, quia led post inhibitionem judicis*, or after advocacion.

*Fol. Dic. v. 1. p. 27. Hope, (ADVOCATION.) MS. v. 2. folio 173.*

NO 1.  
A decree pronounced by an inferior judge, after he was difcharged by an advocacion is fufpended; although the presenter of the advocacion had afterwards appeared in many diets of proces.

NO 2.  
A caufe, carried on at the instance of the Sheriff principal, before the fheriff depute, was advocated.

NO 3.

\* Lord Kames has miftaken the import of this cafe.