

1630. July 7.

LANDS *against* DICK.

THE Lords of Session have not only a power to advocate civil causes to themselves from inferior Courts upon the head of iniquity, but also upon any other reasonable cause, such as its being a matter of importance.

No 123.

*Fol. Dic. v. 1. p. 497. Durie.*

\*\*\* This case is No 8. p. 4789. *voce* FORUM COMPETENS.

1666. February 21.

M'INTOSH *against* The SHERIFF of INVERNESS.

M'INTOSH being pursued for theft-boot before the sheriff of Inverness, upon the old act of parliament James II. bearing, that whosoever should compone with a thief for stolen goods, should be liable in theft-boot, and punishable as the thief or robber; he raises advocacy on this reason, that the act was in desuetude, and the matter was of great moment and intricacy, what deeds should be counted theft-boot, whereunto no inferior Judge ought to decide, because of the intricacy. It was *answered*, That the Lords were not competent judges in crimes, and therefore could not advocate criminal causes from inferior Courts; and the Earl of Murray being sheriff, and having sufficient deputies, both should concur in the careful deciding of the cause. It was *answered*, That albeit the Lords did not judge crimes, yet it was competent to them to advocate criminal causes, *ad hunc effectum*, to remit them to other more competent unsuspected judges.

No 124.  
The Court of Session competent to advocate a criminal cause from the sheriff to the Justice-general.

THE LORDS advocated the cause from the Sheriff, and remitted the same to the Justice, because of the antiquity of the statute, and intricacy of the case.

*Fol. Dic. v. 1. p. 497. Stair, v. 1. p. 362.*

\*\*\* Newbyth reports this case:

1666. Feb. 11.—THE Procurator Fiscal of Inverness having intented action before the Sheriff of Inverness and his depute, against Angus M'Intosh, for committing theft-boot, contrary to the 2d act of parliament of King James V. in so far as his master, Kenneth, having stolen, in the year 1654 or 1655, certain goods, the said Angus M'Intosh seized upon and attached the said thief, and accorded with him for six cows for theft-boot, and therefore dismissed the thief without putting him to underly the law; and therefore the said M'Intosh hath committed theft-boot, and ought to endure the punishment due by the laws and practice of this kingdom of the thief and robber;—the cause being advocated upon several reasons, such as the partiality of the Judge, and that the act was arbitrary and gone in desuetude, not falling under the cognition of an inferior Judge; the LORDS would neither advocate the cause to themselves,

No 124. nor remit it back to the Sheriff, but referred the same to the Justice-General, it being for theft-boot and criminal, founded upon old acts of parliament.

*Newbyth, MS. p. 58.*

1675. *June 25.*

*A. against B.*

No 125.

Causes which resolve into a competition upon double rights may be advocated, although no intricacy be alleged.

UPON a report made to the Lords concerning an advocation, upon that reason, that there was a competition in the case upon double rights; it was debated among the Lords, Whether the cause being undoubtedly competent before the inferior Judge, the pretence, that there was a competition of double rights, should be a relevant ground of advocation; and some of the LORDS were of opinion, that in the general to advocate upon that reason, it were hard, seeing inferior Judges their jurisdiction as to causes competent before them, is founded upon their rights; so that they have as good right to the same as to any other property: And in removings and actions for mails and duties, and others such real actions, when a defence is founded upon a right, or when parties compear for their interest, and produce rights, it may always be pretended, that the question is anent double rights; so that the jurisdiction of inferior Judges may be altogether evacuated, and the LORDS, who have scarce time to decide causes that are proper before them, should be cumbered with processes that may and ought to be determined by an inferior Judge, contrary to the acts of parliament, and in special the 39th act of Queen Mary, her 6th parliament, and the 5th act of his Majesty's 3d parliament, 3d session, discharging the advocation of causes, whereunto inferior Judges are expressly appointed Judges. But if it should be represented and appear that there is intricacy in such causes, wherein there may be question of double rights, the Lords in that case may advocate; but upon the pretence of double rights, as to which it may be there is no difficulty, there ought to be no advocation. Yet it was urged by ———, that the Lords were in use to pass advocations upon the reason foresaid; and albeit the pretence of custom not being verified, and, though verified, being against law, ought not to be put in the balance with express laws, founded upon good reason and common law, yet the bill was passed.

Reporter, *Redford.*

*Fol. Dic. v. 1. p. 497. Dirleton, No 279. p. 136.*

1680. *December 19.* M'LELLAN *against* The BISHOP of DUMBLANE.

No 126.

The Court advocated a cause for church censure, nem.

THE Bishop of Dumblane, as Dean of the Chapel Royal, and Minister of the church of Holyroodhouse, having convened before him Thomas M'Leilan, beadle of the church, upon information of several scandalous miscarriages, he obtained advocation passed by the Ordinary upon the bills, whereupon the