proceſs begun, (ſeeing *res no eſt integra, et mandatum in tali caſu morte mandatoris non ceſſat ;*) and that he has a rational intereſt to ſee that what his dead client was wronged in be rectified, leſt the fault ſhould afterwards be charged on him; and as the law, § 13. *inſtit. de obligat. quæ ex delicto* gives a *commodatarius* an intereſt *rem vindicare* and to proſecute actions, though he be not *rei dominus*; even ſo in an advocate.——But *quæritur*, if he may propone new allegeances not founded on in the defunct's time, or quarrel an act of litisconteſtation extracted long before his death; and if he do it, if he ought not *periculum alienæ litis ſuſcipere et ſubire*, and be liable as if he were the principal client? This interlocutor was adhered to, upon the 13th March 1681. No 20.

Fol. Dic. v. 1. *p.* 25. *Fountainhall, v.* 1. *p.* 260.

1693. *February* 10. EARL of MELVILL *againſt* EARL of PERTH.

No 21.
An advocate fined for the malverſation of his clerk.

If the purſuer was in the kingdom when the proceſs commenced, his advocate may continue his appearance without a ſpecial mandate, though he occaſionally be out of the kingdom.

THE LORDS having called the action, purſued by the Earl of Melvill againſt the Earl of Perth, for reſtoring the compoſition he received for his forfeiture.—— THE LORDS found Mr John Menzies, advocate for Perth, his ſervant's promiſe to enrol that cauſe, and not being done, by his maſter's diſcharging him, was equivalent *fictione juris* to an enrolling, ſeeing he was *in dolo* to conceal the not enrolment, and ſhould have diſcovered it the Earl of Melvill's advocate, that they might not rely on his promiſe: But the 11th and 12th articles of the act of regulations 1672, being urged, that the Lords could not anticipate cauſes before they came in by the courſe of the roll, and diſcharging clerks to write on theſe proceſſes; the Lords would not go over the act of Parliament, nor force the Earl of Perth to anſwer *hoc ordine:* But, in regard to fraudulent dealing, they fined Mr John Menzies, the advocate, in five pounds Sterling to the poor; and James Callander, his man, was debarred the Seſſion-houſe, and committed to priſon during the Lords pleaſure.

1693. *December* 7. In the caſe Melvill againſt Perth, the LORDS repelled Perth's dilator, that Melvill, the purſuer, was out of the kingdom, and there was no factory from him, ſeeing he was here at the firſt intenting, and calling of the proceſs; and a mandate was only requiſite for ſtrangers, or ſuch as were abſent *animo remanendi.*

Fol. Dic. v. 1. *p.* 25. *Fountainhall, v.* 1. *p.* 558. 576.

1694. *June* 21. FACULTY of ADVOCATES *againſt* The MACERS.

No 22.
The right to appoint a door-keeper in the Paliament Houſe.

THE debate between the Faculty of Advocates and the Macers, viz. who of them had the right of keeping the lawyers bar, was heard. On Banantyne's death, the advocates elected James Dalrymple. The macers, by a bill, reclaim-

No 22. ed, and the poſſeſſion not being clear, who had firſt put in Adam Scott in 1661 to be door-keeper; and it appearing that John Bannantyne had ſerved a year before the Faculty ſettled a penſion of 200 merks on him in 1676; therefore the queſtion aroſe, who ſhould officiate *medio tempore* till the right and poſſeſſion were cleared; and it carried that the advocates nomination ſhould take place in the mean time. Some moved that neither of them had right; and that the houſe being the King's, and the Lords being his delegates, they had the ſole right and power of placing all door-keepers within the Parliament-houſe; and that any poſſeſſion, which either the Faculty of Advocates or Macers had, by their gift or act of Parliament 1537, as *officiarii*, *clavigeri*, or ſerjeants *armorum*, was by the Lords tolerance and permiſſion. But this would have been as partial as that deciſion of the Romans, where two neighbouring republics having a difference anent a piece of ground, and referring it to the Senate of Rome, they determined the debatable land to belong to neither, but only to themſelves.

Fount. v. 1. *p.* 621.

1708. *July* 31.

ELIZABETH BUTLER and Lieutenant JOHN GORDON, her Huſband, for his Intereſt, *againſt* ALEXANDER RAGG.

No 23.
An advocate may demand to ſee the proceſs, for a defender out of the kingdom, without a mandate, though he cannot give in defences.

IN a poinding of the ground, at the inſtance of Elizabeth Butler and her huſband, againſt Alexander Ragg, as heir to Margaret Williamſon, an advocate having compeared, and craved to ſee the proceſs for the defender, who was out of the kingdom: It was *alleged* for the purſuers, That no advocate's compearance, for a perſon out of the kingdom, could be ſuſtained without a ſpecial mandate, as was decided, February 3, 1681, ——— againſt Stuart of Archattan, No 17. *ſupra*.

Anſwered for the defender: Though an advocate would not be allowed, without a ſpecial mandate, to plead for one out of the kingdom, he may, by the privilege of his gown, crave to ſee any proceſs againſt ſuch an one, that, in the mean time, before it come in by the courſe of the roll, he may acquaint his friend abroad, and get a mandate, with inſtructions about what defences ſhould be made. The cited deciſion is alien to the point; for an advocate's craving there to have one out of the kingdom reponed, againſt a decree in abſence, could not be ſuſtained, becauſe it reſolved into a defence.

THE LORDS found, That an advocate might, by the warrant of his gown, be allowed to ſee the proceſs for the defender; though he could not be allowed to plead for him and make defences, without a ſpecial mandate.

Fol. Dic. v. 1. *p.* 25. *Forbes, p.* 277.