be allowed to proceed, though they erred; becauſe there was a remedy by ſuſpenſion and reduction if they did wrong. Others contended, That the Lords were the great conſiſtory of the nation, above them, and might advocate or remit as they pleaſed, either ſimply, or with directions and inſtructions to the Commiſſaries how to proceed, as has been ſeveral times done; and though the Lords cannot confirm teſtaments, yet in the caſe of Calder of Muirton, and Monro of Foulis*, they gave directions to the Commiſſaries how to proceed in a competition of executors ſeeking to be preferred to the office; and, therefore, ſeeing Grange had been ſeveral years married, and had children, and was long in the poſſeſſion, undiſturbed and unqueſtioned by this Stirling's claim; and that it was diſſonant to the common principles of law, to prove her marriage by her own neareſt relations only; therefore they advocated the cauſe from the Commiſſaries only *quoad* that point of the hability of the witneſſes, but prejudice to go on as to the other parts of the proceſs, that being the ſingle point complained on; which is ſomewhat extraordinary, to advocate as to one part and not *in totum;* but the reaſon of this was, that they are judges in ſuch caſes *privative*, in the firſt inſtance, except in ſo far as they commit iniquity. (*See* WITNESS.) No 15.

Fol. Dic. v. 1. *p.* 27. *Fount. v.* 2. *p.* 236.

1706. *June* 26.

JOHN and ANDREW MULLIKENS, and their Maſters, Supplicants, *againſt* JOHN SHARP of Hoddam, and WILLIAM COPLAND of Coliſtoun, and JOHN M'NAUGHT, Bailie of the Regality of Terregles.

No 16.
Found to be contempt of authority, to proceed in a proceſs, after the clerk had marked on the margin of the advocation, that it was produced. The clerk's ſignature is *probatio probata* of the dependence of the proceſs at the time.

JOHN and ANDREW MULLIKENS gave in a petition, complaining againſt Sharp of Hoddam, and Copland of Coliſtoun, for proceeding to crave a decreet, and John M'Naught, bailie of the regality of Terregles, for decerning in a removing againſt the complainers, 12th January 1706, notwithſtanding of an advocation at their inſtance, with a ſubſcribed ſignature upon the margin, bearing that the ſame was, upon the 19th of May 1705, produced and admitted by the clerk.

Anſwered: No regard to the marginal ſignature, which bears not that the advocation was judicially produced; and though it did, could only prejudge the clerk, as being but his own aſſertion, and not the Judge, or any other body who knew nothing of it. Nor was there any depending proceſs the time the advocation is alleged to have been produced and admitted.

Replied: The marginal ſignature ſubſcribed by the clerk, is *probatio probata*, that the advocation was judicially produced in a depending proceſs: Seeing ſuch ſignatures uſed not to be ſubſcribed by the Judge, but only by the clerk. And if he has malverſed, the judge may purſue him as accords; but being a perſon of public truſt, his judicial ſignature muſt make faith, and be probative. Beſides, it were dangerous to oblige the complainer, in ſuch a caſe, to inſtruct, either

* Fount. v. 1. p. 781. *See* JURISDICTION.

No 16. that there was a depending proceſs, or that it was a court-day when the advocation was produced; for the purſuers might deſtroy and abſtract their proceſſes; and it would be hard to recover the diets of court from a clerk, where the Judge of the court is concerned, that the thing ſhould not be proved.

THE LORDS found Hoddam and Coliſtoun guilty of contempt of their Lordſhips authority; and decerned them to pay 100 merks of fine.

Fol. Dic. v. 1. *p.* 27. *Forbes, p.* 112.

1741. *June* 23.

PROCURATOR FISCAL of the JUSTICES of PEACE of Haddington, *againſt* FORREST and Others.

No 17.

FOUND that the purſuer might advocate his own cauſe on the head of incompetency.

The like had lately been found before; Hamilton of Ladyland againſt Boyd and others, ſkippers in Irvine.

Fol. Dic. v. 3. *p.* 20. *Kilkerran,* (ADVOCATION.) *p.* 21.

1750. *July* 26. BUCHANAN *againſt* URE.

No 18.
A cauſe below L. 12 cannot be remitted with inſtructions. *See* No 21.

A bill of advocation, from the Sheriff of Stirling, of a cauſe under L. 12 Sterling, being, by the Ordinary, remitted with an inſtruction, one of the parties thinking himſelf aggrieved, in point of law, reclaimed by petition; which the LORDS appointed to be anſwered, for no other reaſon but that the bill of advocation might be ſimply refuſed; being of opinion there could be no inſtruction given in a cauſe below L. 12 Sterling.

And, accordingly, the LORDS, on adviſing petition and anſwers, 'remitted to 'the Sheriff to do as he ſhould ſee cauſe.'

Fol. Dic. v. 3. *p.* 20. *Kilkerran,* (JURISDICTION of the LORDS of SESSION) *p.* 320.

No 19.
Forfeiture of a dog and gun being concluded for in an action, otherwiſe below L. 12, advocation competent, becauſe the value of theſe articles uncertain.

1761. *February* 11. Marquis of LOTHIAN *againſt* OLIVER & FAIR.

AN action being brought before the Sheriff, on the act 1707, againſt ſome perſons, for hunting without a qualification, concluding for the penalty of L. 20 Scots, and forfeiture of the dog and gun; the Sheriff fined each in L. 5 Scots.

The LORD ORDINARY refuſed advocation, in reſpect the value of the cauſe did not exceed L. 12 Sterling.—THE LORDS, on a reclaiming petition, remitted to paſs the bill, as the value of the dog and gun was uncertain, and might exceed L. 12 Sterling.

Fol. Dic. v. 3. *p.* 20.