SECT. VI.

Malversation in a Judge.

No 29.
Consequence of proceeding in a cause after advocation.

1711. *July* 27. Scot *against* Fraser.

In a suspension of a decreet pronounced by Mr Rig, Sheriff-depute of Mid-Lothian, this point came to debated. A pursuit depending before the said Sheriff, the defender procures an advocation, and intimates it in the court; yet during the vacance the Sheriff decerns, which being extracted, and a charge of horning given thereon, the defender obtains a suspension, and at discussing repeats this reason, that the decreet was unwarrantably pronounced by the Judge, and as unwarrantably extracted by the party, after an intimated advocation known to both, and so was *spreto mandato judicis superioris*. As to the Sheriff, his contempt seemed clear, unless he could purge it by some defence, and therefore they ordained him to be cited to answer. But, for the party, it was *contended*, That though *judex litem suam facit*, by giving a sentence contrary to law and the prohibition of a superior Court, yet the party was not concerned nor involved in his guilt, but may lawfully take what the Judge gives him: *Sententia ejus pro veritate habetur*, and he is not to start questions. Some of the Lords thought him culpable too, in respect of his private knowledge of the advocation. But others proposed, that ere they determined this, the Sheriff should be heard, for this may give rise to cure an abuse practised in some inferior courts. Where they suspect an advocation, they summarily pronounce a decreet to prevent it, but afterwards take in bills and defences as if it were a depending process; and when the advocation is offered, they obtrude the decreet, and by this anticipating stratagem venture to reject it, which well deserves a severe regulation.

Fountainhall, v. 2. *p.* 666.

No 30.
A judge found liable in damages and expenses, who had judged in an adjustment of marches where himself had, as an heritor, an interest.

1711. *July* 27. Leitch *against* Fairy.

Andrew Leitch, provost of Ruglen, pronounces a decreet against James Fairy, hammerman there, fining him in L. 30 Scots, for refusing to depone in a cause pursued by one Scot and the Procurator-Fiscal against him, for removing a march-stone bounding their lands, and tilling in the baulk; and having imprisoned Fairy, he procured suspension and a charge to set at liberty; and when the suspension came to be discussed, he insisted on this reason, That Leitch designing to engross the magistracy to himself, and to oppress all who