

APPENDIX.

PART I.

ADVOCATION.

1776. December 18 JAMES STEIL, against JAMES THOMSON.

THE particulars of this case, shortly mentioned No. 22. p. 375. are as follow.

Steil and Thomson were proprietors of a small meadow *pro indiviso*. For several years they possessed in common, and their method of managing was, that Steil took care of the meadow by watering, cleaning it, and cutting the hay for two years, and Thomson for one year, alternately. The person who managed each year was allowed to pasture it with his cattle after the hay was carried off, but the hay itself was every year divided between the proprietors, according to their shares in the meadow.

Both parties feeling the inconveniencies of this joint possession, Thomson, by a verbal communing, agreed to let his share of the meadow to Steil for three years.

Steil being now the sole possessor, was at some expense in improving the meadow, and sowed part of it with oats. Thomson again claimed his share, upon the ground that there had been no bargain completed about the tack. The matter was litigated before the Sheriff of Lanark. Steil having during the course of the proceedings removed the corns which he had reaped into his barn yard, to await the event of the process, an interlocutor was pronounced by the Sheriff, finding him *in mala fide* to remove the corns, ordaining him to divide them with Thomson, and also finding him entitled to no recompence for sowing and labouring the ground.

A bill of advocation, at the instance of Steil, was passed against this judgement. The Lord Elliock Ordinary, "in respect the subject in dispute is under the value of £12. and that the Sheriff has committed no iniquity, repelled the reasons of advocation, and remitted the cause simpliciter."

No. 1.

Advocation found competent, although the sum sued for was under £12. as the matter involved a question of right.

No. 1. The question was brought before the whole Court. The Lords were of opinion, that as not the *ipsa corpora* of the corn or hay only, but the tack and the right which Steil had to possess upon it were in dispute, the advocacy consequently was competent although under the statutable sum. It was thought that it would be exceedingly dangerous to hold advocations of this sort to be incompetent, where so many questions might occur. It was by no means merely an advocacy for a sum of money.

It was also observed from the Bench, that in every removing an advocacy was competent, however small the sum might be. The Court accordingly altered the judgment of the Lord Ordinary, and found the advocacy to be competent.

Lord Ordinary, *Elliock*.

For Steil, *Mat. Ross*.

Alt. *Wight*.

J. W.