

had in the house as an advocate, should give him right to any privilege that belonged to an advocate, but ought not to put him in a worse case than other subjects, who could not be forced to defend upon such bills: And the practice, that the advocates should answer summarily to complaints against them, is only in relation to their trust and office, if they refuse to exhibit or deliver writs entrusted to them: And the trust mentioned in the bill was only to him as *quilibet*, not as an advocate.

Dirleton, No 290. p. 141.

1675. December 21. CREDITORS of Wamphray against LADY WAMPHRAY.

THE Creditors of Wamphray having pursued probation of the tenor of a contract of marriage betwixt Wamphray and his Lady, whereby the Lady disposes her estate of Wamphray in favours of her husband and his heirs, constituting him fiar, whereby the estate might be liable to his debts: Witnesses were adduced for probation of the tenor, amongst whom Mr David Dunmore advocate, was adduced as one.—It was *alleged* for the Lady Wamphray, That Mr David Dunmore was not a habile witness, because he had been advocate for the Laird of Wamphray as his ordinar, and so could not be brought as a witness to discover the weakness and secrets of his cause; for suppose that Wamphray should have consulted him how to defend against the probation of the tenor, and had acknowledged there was such a writ, he could not be adduced to depone that he knew that there was such a contract, as being known to him in manner foresaid.—It was *answered*, That the privilege of advocates can only relate to the secrets communicated to them by their clients; but a contract of marriage being so solemn a deed amongst so considerable persons, can be no secret, and therefore advocates have still been put to depone upon the having of writs, though put in their hands by their clients; and therefore, on the like reason, the probation of a tenor being only the probation of the existence of a writ, and what the tenor of it was, he ought to depone: As the Lord Gosford's oath was taken upon the tenor of a decret arbitral, upon production of an information under his servant's hand, when he was advocate, giving direction for the form of the decret arbitral, which the Lord Gosford did remember, and acknowledged that it was so.

THE LORDS ordained Mr Dunmore to depone if he saw the contract of marriage in question, and what the tenor of it was; but would not put him to depone concerning the existence or tenor of it, by what had been communicated to him by his client at consultation, otherways than by the sight of the writ itself.

Fol. Dic. v. 1. p. 26. Stair, v. 2. p. 388.

* * * This case is reported by Gosford in the following manner:

The Creditors of the Laird Wamphray, against the Lady Wamphray, in the proving of the tenor of the contract of marriage betwixt the Laird and Lady,

X x 2

No 11.

No 12.

In the proof of a tenor; the defender's advocate, cited as a witness for the purser, bound to depone, whether he saw the writ, and what its tenor; but not to divulge any thing communicated to him, which could not appear from the writ itself.

No 12.

at the instance of the said creditors against the Lady; Mr David Dunmore advocate being cited, as a witness by the creditors; it was *observed*, That he could not be received, because he was an advocate, and could not be bound to depone upon his client's secrets; and that he was employed for the parties.—It was *answered*, That he had not been craved to depone upon any consultation or private advice, but upon the tenor thereof; the Lady having most maliciously destroyed her own double, and her husbands, of purpose that her husband's creditors, who were deeply engaged for him, might be defrauded; whereas it was proved by the contract of the husband, in contemplation whereof, the creditors did engage.—THE LORDS did ordain the said Mr David to depone upon the true tenor of the contract; seeing that could not concern any private advice or secret of his calling or employment.

Gosford, MS. No 826.

1676. January 21.

HOME against HOME.

No 13.

An advocate found obliged to answer summarily in an alimentary matter, not regarding his office.

HELEN HOME gave in a bill, desiring that Mr Patrick Home advocate, might be decerned to pay to her the sum of 2000 merks, which was all the means and portion she had by her father, in respect that Mr Patrick, by a tack set to him by his father, is introniter with the estate of Rentoun, for satisfying of the creditors: It was *answered* for Mr Patrick, that he could not be obliged to answer upon a bill, unless it had been in relation to matters in his office as an advocate; and, by the act of regulation, all processes must be inrolled, and come in by the roll.

THE LORDS repelled this allegiance, and ordained Mr Patrick to answer upon the bill, in respect that they are always accustomed to determine bills, and to discuss causes upon bills of suspension (where both parties appear) summarily, and likewise other bills that require present dispatch against persons in and about Edinburgh, who are cited upon the bill, and to answer before the Ordinary upon the bills, and so stop not the preference of solemn processes, which are discussed by the Ordinary upon the bench by the roll; and which is now more necessary than formerly, in respect that by the act of regulation, it is a considerable time ere a process under the signet can come in. And this case being alimentary, and the poor woman in great distress, the Lords sustained the bill.

Stair, v. 2. p. 403.

1676. December 7.

BALLANTINE against EDGAR.

No 14.

An advocate may appear for parties within the kingdom,

JOHN BALLANTINE having obtained a decret against Margaret Edgar, she suspends, and raises reduction on this reason, That she had right to the lands in question by liferent.—It was *answered*, That the reason was competent, and