

1670. *January 26.* WILSON *against* The TOWN of PERTH.

IN an advocacy raised at the instance of the Magistrates against Wilson, of an action raised against them before the sheriff of Perth, upon this reason, that the sheriff was not a competent judge, the town being sheriffs within themselves; the LORDS did advocate the cause, and found, that they themselves were only competent judges, seeing the magistrates were pursued, as representing the town, and not upon any personal obligation which might oblige them as private persons; notwithstanding it was *alleged*, that the sheriffship granted to the town, did not exempt the inhabitants from answering to the sheriff-court of the shire, when they were pursued by one that is not burghess, and if they were pursued before their own court, they would be both judge and party.

Fol. Dic. v. 1. p. 497. Gosford, MS. No 232. p. 93.

No 119.
The Lords advocated a cause, and found themselves the only judges competent, where magistrates of a burgh royal, which had a right of a sheriffship within itself, were pursued before the sheriff of the shire, upon a bond granted only as representing the town.

1681. *December 15.* BETHUN of Blebo *against* His TENANTS.

THE LORDS of Session found to be the only judges competent in removings by the *remedium extraordinarium*, against tacksmen who have years of their tack to run, and are in arrear a full year's rent, viz. that they should either find caution for bygones and in time coming, or else remove, notwithstanding of the hypothecation; and that sheriffs are not competent to judge in such removings, though they be competent to cognosce ordinary removings where there is no standing tack, as is provided by the act 39. Parl. 6. Queen Mary:

Fol. Dic. v. 1. p. 497. Harcarse, (SPUILZIE.) No 855. p. 243.

No 120.

* * See P. Falconer's and Sir P. Home's reports of this case, No 21. p. 7307.

SECT. IV.

Power of advocating Causes.—Power of advocating from one Court to another, where the Court of Session itself has no jurisdiction in the Cause.

1567. *February 18.* CUNINGHAME *against* DRUMQUHASSIE.

ANENT the action pursued by Agnes Cuninghame, one of the daughters and heirs of the umquhile Laird of Polmaise, against the Laird of Drumquhassie, a-

No 121.
The Lords have power to advocate.

No 121.
 from inferior
 courts, not
 only for ini-
 quity, but on
 account of
 the impor-
 tance of the
 matter, such
 as the per-
 formance of
 a bargain re-
 lative to
 lands.

nent reclamation made by the said Agnes, from a decreet-arbitral given by certain Judges, betwixt her and the said Laird, alleging that she was enormly hurt, by giving of the said decreet, which ordained her to give over certain lands pertaining to her in heritage, to the said Laird, for a small sum of money and certain other lands;—it was *alleged* by the said Laird, That she was not hurt by the said decreet, because he was ordained by the same to give a sum of money together with infestment of a great quantity of lands heritably to the said Agnes. It was *alleged* by the said Agnes, That the said lands that the said Laird should give to her pertained heritably to Janet Cuninghame, her sister german, who deceased without heirs of her own body, to whom she was nearest and lawful heir to the said lands. It was *alleged* by the said Laird, That the said Janet, before she deceased, infest him heritably in the said lands. It was *alleged* by the said Agnes, That that infestment was made upon the said Janet's death-bed, she being deadly sick, likeas she was twenty days before, and deceased of the said sickness within three days after the making of the said infestment. It was *alleged* by the said Laird, That notwithstanding the said Janet deceased, as said is, yet the said infestment is good enough in itself, because the same passed upon a contract made two months before the said Janet's decease, obliging her and her heirs to make the said infestment to the said Laird of the said lands heritably; and the whilk time of the making of the said contract she was in good and sufficient health of her body, likeas she was many days thereafter, using and doing her lawful business in the country, repairing to kirk and market, at her pleasure, in sufficient health; and therefore the said infestment passed upon the said contract made long before, as said is, was good and sufficient in itself; which allegiance of the said Laird was found relevant, and admitted to his probation.

Fol. Dic. v. 1. p. 497. Maitland, MS. p. 182.

1629. *January 9.* BARON of BRUGHTON *against* KINCAID.

No 122.

COMPETENT to the Court of Session to advocate criminal causes *ad hunc effectum*, to remit them to other more competent unsuspected Judges.

Fol. Dic. v. 1. p. 497. Durie.

* * * This case is No 6. p. 4788. *voce* FORUM COMPETENS.