

1781. *June 15.*

Mr JOHN ORR, Advocate, Petitioner.

No 29.
An advocate
may be ad-
mitted notary
public.

UPON the application of an advocate to be admitted notary public, the LORDS doubted how far the two offices could be or ought to be in one person. But the Dean and Faculty of Advocates being consulted, there were found many precedents; particularly Lord Haddington, who was a Judge in the Court, had been a notary public; and Mr Joseph Williamson was one at present; Mr Williamson is one of the city-clerks of Edinburgh; and the petitioner had a view to be city-clerk of Glasgow. (See PUBLIC OFFICER.)

Fol. Dic. v. 4. p. 195. Fac. Col. No 59. p. 98.

1800. *December 9.*MOODIE and Others, *against* Sir JOHN HENDERSON and Others.

No 30.
Relative to
the extent
of freedom of
speech, to
which Coun-
sel are en-
titled.

IN this case, which was an action of wrongous imprisonment, oppression, and damages; Sir John Henderson, one of the defenders, having been cited as a haver, emitted a deposition, upon which the opening counsel, for the pursuers, made some animadversions: In consequence of which, Sir John, who was present, used expressions, which gave occasion to the following deliverance of the Court:—‘ THE LORDS having, upon the suggestion of the Lord President, and upon a motion from the Lord Advocate, as Dean of the Faculty of Advocates, taken into consideration what passed at the bar yesterday, at the conclusion of the pleading in the conjoined actions at the instance of James Moodie and others, against Sir John Henderson and others: Find, that words used at the bar by Sir John Henderson, which implied a challenge to Mr Hope, or tended to provoke him to give such challenge to Sir John Henderson, were highly improper; and call upon the Court to show their disapprobation thereof; and, therefore, they ordain the said Sir John Henderson to be censured from the chair: Find, that the words, used by Mr Hope, importing that he would betray the duty of his profession, if he accepted a challenge for any thing said in his official capacity, as a counsel at this bar, were proper and commendable; and, in regard to the allegations by Sir John Henderson, that Mr Hope used improper expressions, or made an ill-founded attack upon him, in his pleadings at the bar, supersede the consideration thereof until the cause come to be advised.’

In consequence of this reservation, the Court, when they pronounced judgment in the principal cause, resumed consideration of the above matter; and the following was their interlocutor: ‘ The LORDS of Council and Session having, in terms of the reservation contained in their interlocutor, of date 28th November last, resumed consideration of the subject-matter therein alluded to; and having particularly attended to the depositions of Sir John Henderson, baronet, a haver called upon to produce writings, Find no suffi-

‘cient ground for imputing to him any intentional variation from the truth in these depositions, the Court being satisfied, that the statements therein-contained, were agreeable, to the best of his knowledge and recollection, at the time : Find also that Mr Hope, pleading as a counsel at the bar for the adverse party in the cause, had a right to comment, with freedom, upon these depositions, as well as upon every part of the evidence, and upon the conduct of the parties against whom he was pleading, in all matters pertinent to the cause : Find, that neither Mr Hope, nor any of the other counsel in the cause, are liable to censure for the mode in which the pleadings were conducted, or for any expressions used by them in the warmth of pleading ; and that no party concerned has any just ground of complaint against them upon that account.’

See M^rKenzie against Marquis of Montrose, Fountainhall, v. I. p. 550. as to a pension to an advocate, under PERSONAL and TRANSMISSIBLE.

The trials of advocates are regulated by the following acts of federunt :

6th July 1688, p. 181. edit. 1790.—24th November 1691, p. 195.—28th February 1750, p. 450.—21st February 1650, p. 69.—28th November 1661, p. 80.—15th January 1704, p. 222.

The Acts of Sederunt relative to the dues of entry, are the following :

28th February 1662, p. 83. At this time the dues of entry were twenty merks for an advocate ; and ten merks for an expectant.

7th February 1679, p. 141. The Faculty had, by their own act, raised the dues to 500 merks Scots.—THE LORDS, by this act of federunt, refuse to confirm the act of the Faculty, and recommend a *voluntary* contribution to intrants.

18th January 1684, p. 158. By this act the LORDS confirm a resolution of the Faculty, fixing the dues at 500 merks Scots for intrants in the ordinary way by examination ; and at 1000 merks Scots for intrants by bill, without examination.

29th June 1762, p. 532. The dues raised to L. 60 Sterling.

6th December 1769, p. 570. Raised to L. 80 Sterling.

11th March 1784, p. 609. Raised to L. 100 Sterling.

8th July 1790, p. 643. Raised to L. 150 Sterling.

The act of regulation 1695, p. 215. contains the following clauses respecting fees :

§ 29. ' That notwithstanding of the regulation formerly made of advocates fees, in the act of Parliament 1672, yet to the effect the said regulation may be better observed in time coming ; that the saids fees be regulate according to the quality of the persons who shall employ them, in manner following, viz. That for one consultation, as is therein deigned, a nobleman shall not give more to an advocate than nine dollars, or two guineas at the most ; that a baron or knight shall not give more than seven dollars, or one guinea and a half at most ; that any other gentleman, or chief burges, shall not give more than four dollars, or one guinea at most ; and that all the rest of the lieges, or any other person, shall not give more than three dollars at most. And further, That there shall not be above three advocates called to the consulting the drawing of the information, after dispute, to the Lords ; and that to the advocate that draws the same (of these three) may be given a full fee, according to the fore-said regulation ; and to the other two, the half thereof, and no more.'

§ 30. ' That in all processses before the Session, it shall be lawful to any of the parties, in any step of the process, to object against the other, that he, either by himself, or some other for him, hath given, or promised to one or other of his advocates, or to some other person, directly or indirectly, for the advocate's behoof, more than is allowed by the fore-said regulation. And in this case, if the party confess, or be holden as confessed, then he shall be immediately fined by the sentence of the Lords, in L. 1000 Scots, whereof 1000 merks to be paid to the party objector, and 500 merks to the poor's box. And that letters on a simple charge of six days, and other executorial necessary, be direct for payment thereof. And further, if the party discovered to be guilty, as said is, shall happen to be the pursuer, then the process shall stop until the fore-said fine be paid, as said is, without prejudice of the fore-said execution, for the same. And in case the advocate, alleged to have received more than the said regulation, shall not, after the giver's confessing, or being holden as confess, purge himself by his oath, in the terms above set down, that he has received no more, then he shall be fined in the quadruple of the fee allowed to him by the regulation, and transgressed, as said is, to be paid into the poor's box. And further, the said advocate transgressing, not purging himself as said is, shall be debarred from the exercise of his employment for the space of three months of session time, without counting the time of vacation.'

The clause above alluded to, of the act of Parliament 1672, p. 485. v. 2. is as follows :

§ 27. ' That the allowance of advocates in time coming, be regulate according to the quality of the persons who employ them, in manner following, viz. That for every consultation, pleading thereupon, and drawing bills upon any interlocutor thereanent, altogether there be given at most to any advocate, by noblemen L. 18, by knights and baronets L. 15, by gentlemen and chief

‘ burgesſes L. 12, and by all the reſt of the people L. 9. And that nothing be
 * allowed for drawing informations to be given to the Lords after diſpute, but to
 * one advocate only, and that the allowance therefor be only the half of what
 * is allowed for the conſultation.’

By act of ſederunt, 7th June 1677, p. 132. it is provided, That if any advo-
 cate, on account of perſonal prejudice, or any other pretence, ſhall reſuſe to con-
 ſult or concur in the capacity of an advocate, with others whom the Lords au-
 thorize to be advocates, he ſhall be removed from his employment. This was in
 purſuance of a letter from the King to the Lords, dated 24th May 1676, record-
 ed in the books of ſederunt, 20th June following, p. 124.

By act of ſederunt, 11th January 1604, p. 36. fifteen advocates are appointed
 for the Inner-houſe ; and any party, who employs any of them in a cauſe de-
 pending in the Outer-houſe, is ordained to provide, at the ſame time, another ad-
 vocate, who is not one of theſe fifteen, and who may be ready to debate the
 cauſe in the Outer-houſe, if the other advocate be engaged in the Inner-houſe.

By act of ſederunt, 23d February 1687, p. 176. one ſervant of each advocate
 is entitled to the privileges of a member of the College of Juſtice.

By the King’s letter, 17th June 1674, p. 113. no advocate ſhall preſume to
 adviſe or ſuggeſt any thing that expreſſes or imports the charging any ſentence of
 the Lords with injuſtice, in any manner of way, either publicly in the exerciſe of
 his function, or privately in converſation with his clients, or others.

By the King’s letter, 20th June 1676, p. 124. the advocates, and others of the
 College of Juſtice, ſhall be ordered and ruled by the Lords in all things relative
 to their employments.

By the acts 11th January 1604, p. 36. and 24th June 1643, p. 53. advocates
 ſhall not loſe time in idle diſcourſes to the prejudice of other parties, nor inter-
 rupt one another, or the judges.

By the regulations 1695, § 23d, p. 214. the Lords ſhall, if they find any bill
 to be groundleſs, or in its length ſuperfluous and litigious, fine the advocate ſub-
 ſcriber, and party, in ſuch pecuniary mulct, as they ſhall judge reaſonable.

By act, 9th July 1709, p. 232. it is ordained, That advocates be careful that
 the papers put into the boxes be drawn with decent and reſpectful expreſſions
 towards the Judges and parties ; and any advocate tranſgreſſing, ſhall be debarred
 the houſe during that ſeſſion, when he tranſgreſſes, and otherwiſe puniſhed, ac-
 cording to his offence.

By act 19th December 1710, p. 241. all petitions, answers, and informations, given in to the boxes, whether in print or writing, shall have an advocate's name thereto subjoined, who shall be looked upon as the drawer thereof, and likewise liable to the censures in the 23d article of the regulations 1695, above-mentioned.

By act, 15th June 1738, p. 315. whatever paper is signed by a lawyer, is understood to be the deed of that lawyer, and he is to be held to rest his character upon what is therein advanced.

By act, 21st December 1649, p. 60. an advocate is deprived for buying pleas.

By act, 26th July 1699, p. 220. an advocate having taken right from a trustee, without consent of the constituent, is deprived, but thereafter reponed.

By act, 17th December 1708, p. 227. an advocate is suspended for unbecoming expressions.

By act, 23d June 1756, p. 496. an advocate is suspended for contempt of authority.

* * * Since the case No 4. of this Title was printed, it has been discovered that a copy of Auchinleck's MS. Decisions, was lately purchased, for the Advocates Library, at an auction. The Editor has examined it; he finds that No 4. copied from Lord Kames, is precisely in Auchinleck's words, p. 211. of the MS. *voce* WITNESS.

Auchinleck reports, No. 6. *PATERSON against ALEXANDER*, (the date the same as in Durie) as follows :

CORNELIUS PATERSON, a stranger, being made prize by Captain Alexander, intents reduction of the admiral's decret, whereby his ship and goods were decerned prize. The pursuer being absent himself out of the country, it was *alleged* no purfuit can be sustained, at the stranger's instance, unless his procuratory were produced.—THE LORDS sustained the purfuit; his advocate finding caution to produce a procuratory before litifcontestation.

Fol. Dic. v. 1. p. 25. Auchinleck, MS. (STRANGER) p. 193.