

M A N D A T E.

1628. February 2. L. DUFFUS against ———.

IN an action, the Executors of the L. Duffus against ———, for payment to them of the sum of 500 merks, addebted by his bond to the defunct; for exhibition of the which bond, the defender was convened, and for registration thereof, but not by way of action for payment; the defender *alleging*, that the defunct had written a missive letter to him, subscribed with his hand, shewing that he had given the bond to one called Snyland, to whom he desired the defender to make payment of that sum, and to receive from him his own bond, according whereto he had paid the same to him, and hath recovered his own bond, which he hath cancelled;—this allegeance was repelled, except the defender would herewith allege, that the payment was made by him, according to the direction of the foresaid letter, in the defunct's lifetime, before his decease, or else after his decease, the defender not knowing thereof; for the LORDS found, that if the payment was made after that the defender knew the director of the letter to be deceased, that that payment so made could not liberate the defender, seeing the person to whom the letter desired him to make the payment, was the defunct's servant, and so it was probable that he was appointed to receive the same only to his master's use, who being dead, the defender knowing the same, he could not be in *bona fide* to have done it, *quia mortuo mandatore expirat mandatum*.

Act. Gibson.

Alt. ———.

Clerk, Gibson.

Durie, p. 339.

1705. June 15. Competition betwixt the CREDITORS of WILLIAM WALWOOD.

HENRY WALWOOD, merchant in Edinburgh, having disponed his whole estate to William, his eldest son, with the burden of provisions to Henry, h's

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No 1.
Mandates fall
by the death
of the gran-
ter.

No 2.
An adjudica-
tion was ob-
jected to on
account of
pluris petitio,
because a

No 2.

person by order of the creditor, had subscribed for a share in a company, by which the debt was diminished. The mandate was not found sufficiently clear to have that effect.

second son, and Helen, his daughter; and Henry having assigned his portion to Robert Walwood, the father's brother, he transferred it under trust to John Liberton, merchant in Edinburgh, who adjudged William's estate.

In the ranking of William Walwood's Creditors, it was *alleged* for George Home, one of the town-clerks of Edinburgh, that the adjudication at the instance of John Liberton is null; at least ought to be restricted, as being led for more than was due, in so far as Henry Walwood was debtor to his brother in L. 250 Sterling subscribed for him in the African Company, which should have been deducted off the adjudication, at least must be allowed to restrict the same; for clearing of which ground of debt, three letters from Henry to his brother William are produced, in one whereof he desires William to subscribe for him two or three hundred pounds Sterling in the African Company: In another he writes, That William had informed him he had subscribed for L. 500 Sterling, and desires him to place L. 250 to his account: And in a third letter, after the Company broke, he desired William to do for his share of the stock, as he was to do for his own. From which commission to sign, acquiescence in what was done, and mandate to negotiate his proportion of the stock, Henry appears to be debtor to William in the half of the subscription money.

Answered, The not allowing compensation, though Henry Walwood had been debtor to his brother for the L. 250 is no nullity in the adjudication; since a ground of compensation needs not to be noticed, unless it be proponed, and is not receivable after decret. *2do*, The desire of Henry's letters was never performed, nor complied with by William; since he subscribed the L. 500 for himself before receiving his brother's letter; and did not state the L. 250 to his account, nor yet made or obliged himself to make any transfer of the share to Henry, while the Company's circumstances were entire; and now when *res non est integra* with the Company, neither William, if he were alive, nor his creditors, can transfer.

THE LORDS repelled the allegiance of extinction and compensation founded on William Walwood's subscription in the books of the African Company; and found the said allegiance not instructed by the writs produced.

Forbes, p. 4.

1725. January 7.

Sir WILLIAM JOHNSTON of Westerhall *against* JAMES, Marquis of Annandale.

No 3.

A party received a mandate to raise money for the expenses of a funeral. Found; that

Sir WILLIAM was prevailed upon, at the request of the Marchioness of Annandale, and other friends of the family, to undertake the management of the late Marquis his funerals, and received from the Marchioness (who was the executor nominate) a mandate authorizing him to raise what money should be