

1715. June 7.

The Earl of MARCHMONT and MORISON of Prestongrange, *against* HOME of Wedderburn.

No 26.

An advocate's appearance for a defender within the kingdom, is *presumed* to be by mandate; which mandate is *presumed* to continue, though the defender, *pendenti liti*, leave the kingdom.

THE Earl of Marchmont, Prestongrange, and others, being engaged for Wedderburn, and made payment of several sums of money, do pursue him for repayment and relief.

It was *alleged*: That any valuable payment condescended upon, being by Prestongrange, who was out of the country, there could be no further procedure against the defender without a mandate from him.

It was *answered*: That the process *litis contestat*, and Prestongrange having deponed before he went out of the country, the compearance made by his procurator was presumed to be by his mandate; which mandate once given, is presumed to continue.

'Which the LORDS sustained.'

Fol. Dic. v. 1. p. 25. Dalrymple, No 143. p. 198.

1737. July 8.

FRANCIS SCOTT *against* Lord NAPIER.

No 27.

A defender, cited as a haver, not obliged to depone, unless a special condescendence is given in.

Lawyers, agents, &c. called as havers, bound to answer only such interrogatories as are competent to be put to their client.

IN the reduction and improbation betwixt these parties, the defender produced a charter and sasine, sufficient, with forty years possession, to exclude the pursuer; whereupon he took out a diligence in general to prove interruptions; and, having execute it against the defender, 'THE LORDS found he was not bound to de-
'pone, unless a special condescendence was given in of writs called for to be ex-
'hibited.'

Thereafter the pursuer *insisted*, That the Lord Napier's doers and agents should depone, in general, as well as any other havers. To which it was *objected*, That they were not bound to depone otherwise than the defender himself was, they being the same with himself.—At advising whereof, 'THE LORDS found, 'That
'no interrogatories could be put to Lord Napier's lawyers and doers, as to any
'papers they had occasion to see in the course of their employment, but what
'might have been put to my Lord himself.'

The pursuer reclaimed; and set *forth*, That if any of the defender's lawyers, &c. have had imparted to them the knowledge of any particular writing, under confidence not to reveal the same, he was willing they should be excused from deponing upon such writing; but as to those they have seen in the common course of their business, under no particular tie of secrecy, there could be no reason why the pursuer should not have the benefit of their oaths, with respect to such papers, as well as of the party himself. *2do*, Granting the lawyers and agents are not bound to answer to a general interrogatory, as to such writs as they have come to the knowledge of in the course of their employment; yet the pursuer

has reason to believe, that one of the defender's agents, who was called to depone, had an opportunity to see several writs that are now in Lord Napier's charter-chest, before he was employed by his Lordship : As to which there was no reason why he should not depone, in general, upon these, as well as any other party called. Besides, he has seen other papers, since he was my Lord's doer, in the hands of third parties, as to which he should also depone, *3^{to}*. It was prayed, That chamberlains, factors, and other trustees, should not be comprehended under the interlocutor.

THE LORDS adhered.—(See EXHIBITION.)

Fol. Dic. v. l. p. 26. C. Home, No. 67. p. 115;

No 27.

1763. February 25.

LOCKHART *against* GOLDIE.

It having been represented to the Court, that yesterday, Alexander Goldie, writer to the signet, used some threatening expressions, and otherwise behaved in an indecent manner to Mr Alexander Lockhart advocate, on account of some expressions used by the said Mr Alexander Lockhart, in pleading in this Court, when a petition for the said Alexander Goldie, against George Goldie, was moved, The LORDS ordered the said Alexander Goldie to attend immediately at the bar; and having taken the said Alexander Goldie's declaration thereanent, they pronounced the following sentence :

THE LORDS having considered the declaration of Alexander Goldie, writer to the signet, this day emitted, with the letter dictated by him, and sent, by his servant, to Mr Alexander Lockhart advocate, find it proven, That the said Alexander Goldie was yesterday guilty of using threatening expressions to the said Alexander Lockhart; for what was said by him in pleading at the bar of this Court; therefore, they appoint the LORD PRESIDENT, from the chair, to rebuke the said Alexander Goldie, and to exhort him to be more cautious in time coming; and ordain him to find caution, in the hands of the clerk to his petition against his brother, to keep the peace for the space of one year, from and after the date of this sentence, under the penalty of £ 200 Sterling; to be disposed of, if incurred, as the Court shall direct; and ordain the said Alexander Goldie to be carried from the bar, and imprisoned in the tolbooth of Edinburgh, until he find caution as aforesaid; and grant warrant to the magistrates of Edinburgh, and the keeper of their tolbooth, to receive and detain him accordingly; and in respect of the particular circumstances occurring in this case, and that in presence of this Court, the said Alexander Goldie has acknowledged the fact, and has thrown himself upon the mercy of the Court; therefore, they proceed to no higher censure, but ordain this sentence to be insert in the books of federunt, to the terror of others to commit the like offences in time coming.

Acts of Sed. p. 539. Edit. 1790.

No 28.

Advocates are protected by the Court, in the exercise of their office.