

No 34.

1771. December 10. BURNET against CLERK.

A FARRIER being employed to attend a horse that was diseased, the owner directed him to give the horse no medicine but nitre. The farrier accordingly gave the horse nitre ; but, to make him swallow it more easily, mixed it with a little treacle. The horse died next day ; and the owner brought an action for the price, in respect the farrier had gone *ultra fines mandati*, in mixing treacle with the nitre. The COURT, however, were of opinion, that the defender had not gone *ultra fines mandati*, but that the mode followed was necessary to fulfil the orders given, and therefore assolized.

\*.\* This case is No 8. p. 849I. *voce* MANDATE.

No 35.

1791. May 20. COOPER against GREEN and CHATTO.

COOPER, a painter in Leith, gave an order in October, to Snowball, the rider of Green and Chatto of Newcastle, for a barrel of lintseed oil. The oil was shipped 19th December, but the vessel did not sail till the 24th, and next day, the 25th, which was the earliest post-day, Green and Chatto wrote to Cooper, inclosing the bill of lading and invoice, which were received by Cooper on the morning of the 27th. Next day, the 28th December, Cooper got intelligence that the ship was wrecked, and cargo lost. In an action for the price of the oil, the defender urged the improper delay of executing his commission, and likewise the delay of acquainting him of the oil being put aboard, which ought to have been done the same day that it was shipped ; and *insisted*, that, on these accounts, he was not liable for the price.—THE LORDS were of opinion, that where no time is specified for the execution of a commission, a reasonable discretion is allowed, and found there was no *mora* of acquainting Cooper of the goods being shipped ; it being the common practice to send the bill of lading and invoice only upon the sailing of the vessel : They therefore found Cooper liable in the price. See APPENDIX.

*Fel. Dic. v. 4. p. 60.*

No 36.

1791. July 1, SMITH against MACPHERSON.

MACPHERSON at Inverness commissioned a quantity of earthen ware from Smith of Burslem, and desired that they might be sent from Burslem to Hawley's wharf, London, in packages, directed for the purchaser at Inverness, to