

No 8. There had been no *imperitia* or improper treatment in the present instance; the draught was innocent and salutary. The addition of treacle, instead of being a deviation, was even necessary, in order to fulfil the pursuer's directions as to the administering of nitre; and as the horse had been *moribundus* when the medicine was given, there was not even a presumption that it had been the cause of his death.

The Judges were of opinion, That the defender had not gone *ultra fines mandati*, but that the mode followed was necessary to fulfil the orders given. Neither did their Lordships think that the abstract principle of responsibility, in the event of a deviation from the mandate, would, in the present instance, have applied; it having been observed from the Bench, That where a person in a profession of skill, adopted measures that were even *extra fines*, he would not, provided these measures were innocent and proper, be liable for the consequences.

The Sheriff of Edinburgh had found the defender liable for a certain sum as the price of the horse; but the Court altered that judgment, assoilzied the defender, and found the pursuer liable in expenses.

Lord Ordinary, *Coalston*.  
Clerk, *Campbell*.

For Lord Monboddo, *J. Boswell, et alii*.  
For Clark, *J. Maclaurin, et alii*.

R. H.

*Fac. Col. No. 118. p. 347.*

1776. December 10.

NASMITH, Petitioner.

No 9.

A WRITER or agent before the Court of Session, prosecuting for payment of his account of business, is not bound to produce his client's mandate, empowering him to manage a particular piece of business.—See APPENDIX.

*Fol. Dic. v. 3. p. 398.*

1779. January 13.

PAISLEY against RATTRAY.

No 10.

RATTRAY wrote a letter of credit, in favour of Nisbet, to Paisley, authorising him to furnish Nisbet with goods to the amount of L. 10, and take his bill for the same; which, if not paid by Nisbet, he would see retired. Paisley furnished the goods, but demanded no bill from Nisbet, on whose bankruptcy Paisley pursued Rattray for the sum in the letter of credit.—THE LORDS found, That in respect the mandatary had not observed the terms of the mandate in taking a bill for the money from Nisbet, no action lay against Rattray the mandant.

*Fol. Dic. v. 1. p. 398. Fac. Coll.*

\* \* This case is No. 7. p. 8223. *voce* LETTER OF CREDIT.