

No. 44.

Poor MARY M'LEAN, or BRYAN, Appellant.

ALEXANDER MURDOCH, Respondent.

Mandate—Agent and Client.—Held ex parte, (affirming the judgment of the Court of Session,) in an action at the instance of a law-agent, for payment of his account, that a mandate alleged, but denied, to be signed by the client's mark, together with other circumstances, inferring employment, was sufficient to entitle him to decree against the client.

May 28, 1827.

1ST DIVISION.
Bill Chamber.
Lords Cringletie
and Eldin.

MURDOCH, a writer in Ayr, raised an action, before the Sheriff of Ayrshire, against Noble, Morris, Murray, and Mary M'Lean, widow of Bryan, an inn-keeper in Kilmarnock, (who had died bankrupt, and as to whose estate and effects she had along with these individuals entered into an arrangement with Bryan's creditors,) concluding against them, jointly and severally, for payment of L.249, 6s. 9d. said to have been incurred under the professional employment of these defenders. Murdoch relied on a mandate bearing,—*Kilmarnock, 9th August, 1819.*—As it is necessary that the compositions due on the debts of the late John Bryan be immediately discharged, and money borrowed on the property to do this, we hereby authorize Alexander Murdoch, writer in Ayr, to take measures accordingly; and to borrow money on the security of the house at Kilmarnock, and to act therein as our agent. We are, (Signed) JOHN MURRAY, WILLIAM NOBLE, ARCHIBALD MORRIS, MARY + BRYAN, her mark.' He further alleged, that the defender, Mary Bryan, subsequently attended one of the meetings along with him, when a dividend was paid to the creditors. Murray, Noble, and Morris, made no appearance; but Bryan contended that truly Murdoch was their, not her agent; that he was co-operating with them in a scheme to defeat her just rights; that she never had adhibited her mark to the mandate; and that the pursuer was bound to prove she had, if he meant to rely on it as evidence; that the pursuer did not borrow money over the house, or take any steps for that purpose; that she had attended the meeting to endeavour to bring the creditors to easier terms; and that the other defenders, in their pleadings in another matter, arising out of the arrangement with the creditors, took credit for this very account. The Sheriff decerned against the defenders. The Lord Ordinary on the bills refused two bills of advocacy; and a reclaiming petition to the Court was refused on the 23d November, 1824, without answers.*

* See 3 Shaw and Dunlop, No. 205.

M'Lean appealed, and repeated the statements made in the May 28, 1827. Court below. No appearance was made for the respondent.

The House of Lords ordered and adjudged that the appeal be dismissed, and the interlocutors complained of be affirmed.*

J. DUTHIE, *Solicitor*.

WILLIAM CRAWFURD, Esq. of Cartsburn, Appellant.—*Adam—Wilson.* No. 45.

HELEN M'CORMICK, and JOHN FAIRIE, her Husband, Respondents.—*Keay—James Campbell.*

General Discharge.—Circumstances under which it was held, (affirming the judgment of the Court of Session,) that an agreement between partners in trade relative to company matters, 'to grant full and competent discharges to each other, in full of all bonds, &c., as individuals or partners,' did not embrace a bond by one of the partners to another, relating to a private transaction between themselves.

IN the year 1775, previous to the American Revolution, Thomas M'Knight, William Aitchison, James Parker, and William M'Cormick, were concerned as partners in a variety of commercial houses and trading adventures in and from America, under the firm of Thomas M'Knight and Co., Aitchison and Parker, and William M'Cormick and Co. On the declaration of independence, these individuals, being all royalists, except Aitchison, who remained behind, returned to Great Britain. In the confusion of their flight, a great proportion of their books and valuable papers were lost or destroyed, thereby creating almost insuperable difficulties to the ascertaining how their mutual balances stood, and leading to various intricate and tedious accountings.

May 28, 1827.
2D DIVISION.
Lord Pitmilley.

In 1782, M'Knight alleging that M'Cormick had inter alia L.600 belonging to William M'Cormick and Co., and M'Cormick alleging that M'Knight held a similar sum due to the same company, it was agreed that these sums should be lent on a bond to a third party, in trust for the partners; and a bond was accordingly granted. In November 1786, M'Knight borrowed from M'Cormick L.700, and granted bond to repay the same. This deed bore no reference to the company transactions, and

* The Master of the Rolls heard this appeal.