

1712. July 10.

HAMILTON of Withaw *against* BOYD.

UPON report of the Lord Cullen, the LORDS found, That an advocate com-
 appearing without a mandate, for a person out of the kingdom, called as a defen-
 der in a process, ought to be allowed to see the process in common form; but did
 not determine whether such an advocate ought to be allowed to propone defences
 for his absent client.

Fol. Dic. v. 1. p. 25. Forbes, p. 614.

1713. February 19.

WILLIAM BLAIR of that Ilk, *against* Mr ADAM CUNNINGHAME, Advocate.

THE Laird of Blair having pursued Mr Adam Cunninghame, for exhibition
 and delivery of writs, contained in an inventory, bearing at the bottom these
 words, 'I Mr Adam Cunninghame, advocate, grant me to have received the
 writs above-mentioned, from Mungo Campbell of Burnbank; and I oblige me
 to reproduce them to him upon demand. In witness whereof, I have subscrib-
 ed these presents, at Edinburgh, the last day of July, One thousand seven-
 hundred and six. A. CUNNINGHAME.'

Alleged for the defender: *1st*, The receipt and obligation is null, as neither ho-
 lograph, nor mentioning the writer's designation, nor yet signed before witnesses:
 For not being a receipt granted to any clerk's office, nor yet in the ordinary
 form of a receipt of papers, but in the form of an obligation; it cannot be sus-
 tained, unless it were solemn according to law. *2^d*, Seeing papers pass between
 clients and advocates, without receipts, the receipt in question hath no more
 force, than if it were proved by the defender's oath that he received these writs:
 And his receipt could not oblige him to more, than to purge himself by oath,
 That he had not fraudfully put them away, nor suppressed them. It ought to
 be presumed, that writings, not in a lawyer's hand, are returned; because per-
 sons are not in use to give receipts, for their writs, to their lawyers. And if it
 were otherwise, lawyers were in a miserable condition; it being hard for them to
 instruct the returning of all writs that might be proved to have been in their
 hands in the course of their employment.

THE LORDS having considered the defences, and particularly that the receipt
 is not holograh, wanting writer's name and witnesses, and not granted to a per-
 son in a public office; they found the defender no further liable for the papers
 in the inventory whereto the receipt is subjoined, than to give his oath what he
 knows concerning them, what became of them, and how they were disposed of.

Fol. Dic. v. 1. p. 26. Forbes, p. 671.

No 24.
 Found as a-
 bove, as fo-
 seeing proce-
 sses.

No 25.
 An advocate
 granted re-
 ceipt for
 writs, refer-
 ring to an in-
 ventory. It
 was granted
 to a private
 individual,
 not to a per-
 son in a pu-
 blic office.
 Not being
 holograph,
 nor otherwise
 formal, the
 advocate no
 farther liable,
 than to make
 oath what be-
 came of the
 writs.