

which he expressed a vehement admiration and esteem : This raised a laugh in the audience.]

PRESIDENT. The Act of Parliament did not mean to make any alteration in the law.

On the 18th December 1778, "The Lords refused the bill of advocation, on the merits."

Act. Ilay Campbell. *Alt.* J. Monro.

Reporter, Stonefield : unanimous, with the exception of Lord Covington.

1779. January 12. JOHN M'FARLANE *against* GEORGE BUCHANAN.

EXHIBITION *AD DELIBERANDUM.*

In an exhibition *ad deliberandum*, a charter of adjudication and infestment, in favour of the defender in possession, not sufficient to bar the pursuer from insisting for exhibition of the grounds of the charter.

[*Fac. Coll.*, VIII. 89; *Dict.*, 3991.]

HAILES. It is a singular thing to bring an action *ad deliberandum*, at the distance of 47 years from the death of the former proprietor : I do not see why the common course of a trust-bond and an adjudication in implement has been departed from.

KAIMES. There is no declarator of expiry of the legal : the security is not rendered *property* by the lapse of the ten years.

COVINGTON. The predecessor who died in the right, has never been denuded. Here there is nothing sufficient in law to bar the exhibition *ad deliberandum* : though it must be confessed that the action comes uncommonly late.

On the 12th January 1779, "The Lords ordained George Buchanan to produce the adjudication in his person, with the *grounds* thereof, and conveyances thereto ;" adhering to Lord Justice-Clerk's interlocutor.

Act. W. Baillie. *Alt.* Ilay Campbell.

1779. January 13. JAMES PASLEY *against* THOMAS RATTRAY.

MANDATE.

Action of Relief denied to a mandatory who had furnished goods on an open account, without taking a bill, as stipulated in the mandate, to furnish them.

[*Faculty Collection*, VIII. 91 ; *Dictionary*, 8228.]

COVINGTON. It is the same thing whether a bill was taken or not : *that* was for the security of the person who advanced the money.

MONBODDO. Every mandatory must observe his mandate, and execute it *in forma specifica*. By the mandate credit was to be given to both the brothers; and a bill to be taken at a certain term from both. This was not done: hence a loss to the mandator, who, if a bill had been taken, might have got it indorsed to him, and made good his relief. But, be this as it will, the mandator is not bound; for his directions were not obeyed.

ELLIOCK. How could Rattray have obtained payment when there was no bill granted.

JUSTICE-CLERK. A letter of credit is of the nature of a cautionary obligation. We cannot extend cautionary beyond the intention of the party. The law says, and common sense says, that in executing human transactions you must take in *bona fides*, and admit of what is done according to the *spirit* of an obligation, although it may not be according to the *letter*. But *here* the mandate was not executed in equipollent terms.

KENNET. The *finis mandati* ought not to be exceeded; but *here* what was done was tantamount; and the granter of the letter can qualify no loss.

BRAXFIELD. The observing of the words of a mandate is of no consequence as long as its spirit is observed. No loss is qualified here.

GARDENSTON. The mandate has not been duly executed. The doctrine of *tantamount* is dangerous, as introducing arbitrary decisions. If you do not what "I order you, I am not bound." Suppose that Pasley, instead of furnishing sugar, had advanced money to the same extent, or delivered wine or tobacco to the same extent, it might be said, that by such advance or delivery no loss could be qualified; yet the cautioner, in such case, would not have been bound.

PRESIDENT. The mandate must be obeyed. In all mercantile transactions matters ought to be exactly conducted.

On the 13th January 1779, "The Lords sustained the reasons of suspension;" altering Lord Stonefield's interlocutor.

Act. R. Corbet. *Alt.* A. Bruce, (dead.)

Diss. Kennet, Covington, Stonefield, Braxfield.

1778. November 14, and 1779, January 15. JOHN GRANT *against* ROBERT DONALDSON, &c.

ABBAY OF HOLYROODHOUSE.

It is necessary for a Messenger, executing a caption within the precincts of the Abbey, to have the concurrence of the Bailie. In order to have the benefit of the Sanctuary beyond twenty-four hours, the Party's name must be entered in the Abbey books.

[*Fac. Coll. VIII. 98; Dict. 5.*]

KAIMES. Sanctuaries may, in some cases, be of use; but I would confine their privileges within narrow bounds. A person may be within the abbey