No. 1. to call together a number of witnesses to be present at the transaction; that on the contrary, it was usual to talk over matters in private, and frequently with the agent alone; and that when a party and his agent met together, and the agent received verbal instructions, it hardly ever happened that a formal mandate was written out, or any document of the employment given. In fact, to suppose a mandate necessary in the supreme courts, whose jurisdiction extends over the whole kingdom, would greatly diminish the utility of these Courts. In most cases, therefore, were the original employment to be denied, it would not be in the agent's power to bring direct legal evidence of the fact. The embarrassment to the Courts of Justice must be great, were no business to go on till an agent was possessed of full and complete evidence of his being employed; and in the present case, the evidence which had been produced must, if not wholly sufficient, amount at least to a *semiplena probatio*, and the petitioner therefore must be allowed to depone in supplement.

Observed on the Bench, That there does not seem to be a *bona fides* on the part of young Jamieson; and that it is not usual for a man of business to require a written mandate. The Lords (10th December 1776,) "altered the interlocutor, and found Jamieson liable for the account and the expense of "extract."

Lord Ordinary, *Affleck*. For the Petitioner, *Crosbie*.

J. W.

1800. *June* 18. LINDSAY and ALLAN *against* JOHN CAMPBELL.

No. 2.

A shipowner found liable for the price of furnishings made to his vessel, by order of the master, at a home port.

LINDSAY and ALLAN furnished a cable for a gabbart, while it lay in the harbour of Greenock, upon the order of Daniel Clark the master. John Campbell, who resides in Greenock, was the owner of the vessel. Mr. Campbell, when he first saw the cable on board the vessel, found fault with the master for getting it, as being of too large a size, upon which the latter took it on shore, but it was not returned to the furnishers.

Some months after, Lindsay and Allan brought an action against Campbell for £12. 19*s.* as the price of the cable. In defence, he

Pleaded: From obvious views of expediency, the owner of a vessel is liable for necessary furnishings made at a *foreign* port by order of the master. But the powers thus bestowed on shipmasters, being dangerous to the owners, and not sanctioned by common law, are circumscribed within as narrow limits as the ends for which they were bestowed will admit of. And accordingly, when the vessel is in a home port, as the furnishings requisite for her can with ease be ordered by the owner himself, so the law has wisely withheld from the master the powers of binding his constituent.

No. 2.

Answered: Although the master's powers of binding the owners for money borrowed on account of the vessel, or of hypothecating her, cease when she is in a home port, 4th March 1761, Rope Work Company of Port-Glasgow, No. 68. p. 6268. 29th July 1788, Hamilton, No. 69. p. 6269; yet, as the *præpositura* of the master continues, his power of binding the owners for ordinary furnishings is invariably the same, whether the ship be at home or abroad; Stair, B. 1. T. 12. § 18. Macdowall, vol. p. 399. Ersk. B. 3 Tit. 3. § 43. Molloy, vol. 1. p. 324, 329, 331. Strange's Reports, vol. 2. p. 816. Graham *v.* Burnett; Vernon, vol. 2. p. 643. Speering *v.* Degrave; Douglas's Reports, p. 101. Wilkins against Carmichael.

A majority of the Court, on the general doctrine pleaded by the pursuers, and also on the special ground, that Campbell, although he disapproved of the purchase of the cable, did not see it returned to the furnishers, "decerned in "terms of the libel, and found the defender liable in expenses."

After the reclaiming days had expired, the defender presented a reclaiming petition, in which he stated, as *res noviter veniens ad notitiam*, that Clark, soon after he removed the cable from the veesel, told the pursuers, that he alone was answerable for its price; on which specialty the defender craved that the judgment should be altered.

But the petition was refused without answers.

Lord Ordinary, *Cullen.* Act. *Maccormick.* Alt. *Montgomery.* Clerk, *Sinclair.*

R. D. *Fac. Coll. No.* 185. *p.* 423.

1806. *May* 15. WATSON *against* The BANK of SCOTLAND.

No. 3.
A Bank is liable to the public for the conduct of its servants, in the operations of banking carried on at its office.

IN 1792, the Governor and Company of the Bank of Scotland established a branch of their bank at Brechin, and appointed James Smith and Sons their agents at that place, who had powers to transact the ordinary business of the Bank; received money on the same terms as the Bank; kept cash-accounts, and granted promissory-notes, bearing the usual rate of interest allowed at the Bank of Scotland. An office was opened at Brechin, where their business was transacted, over the door of which, *The Bank of Scotland's Office* was affixed in large characters.

The receipts granted for money deposited in this office, were filled up from engravings, upon bank paper, in a uniform style, and were signed by James Smith and Sons, as agents for the Bank. A placard was put up in the Bank-office, stating the form in which bank-receipts were to be granted, and particularly, that they were to be signed by James Smith and Son, as agents of the Bank. But it was alleged, that this placard was in such a situation as not to be easily read by persons frequenting the Bank.