

P R O C U R A T O R.

1610. July 14.

WEDDERBURN *against* NISBET.

No 1.

AN eldest son compearing in his father's cause, will be reputed his procurator, though he produce no mandate.

Fol. Dic. v. 2. p. 210. Haddington.

* * This case is No 59. p. 7326. *voce* JURISDICTION.

1665. November 24.

Mr JAMES CHALMERS *against* Lady TINWALD.

No 2.

MR JAMES CHALMERS, parson of Dumfries, having obtained a decret before the Sheriff, for a part of his stipend, against this Lady Tinwald, for whom a procurator compeared, and took a term to produce her, and she succumbed, whereupon she was holden as confessed; she suspends, and *alleges* that the decret bears not the procurator to have produced any mandate, and therefore craves to be reponed to her oath.

A procurator having compeared for a defender without a mandate, and decree having been passed, it was found not to be *in foro*.

THE LORDS finding that there was nothing else alleged by the procurator that might infer his being informed or having warrant, but only his taking a day to produce, they would not sustain the decret, unless the charger instructed the same by proving the quantities.

Fol. Dic. v. 2. p. 210. Stair, v. 1. p. 313.

1694. January 10.

WILLIAM KING *against* GEORGE SETON of BARNs.

No 3.

HALCRAIG reported William King against George Seton of Barns, for some reparations of a house. Barns *alleged* the decret was truly in absence, seeing

No 3. the procurator compearing had no mandate. *Answered*, His producing writs relative to the cause presumes a mandate. *Replied*, These writs were in his hands upon another account. THE LORDS found it sufficiently instructed that he was his ordinary procurator, and had a mandate in this cause.

Fol. Dic. v. 2. p. 194. Fountainhall, v. 1. p. 590.

1709. January 4.

JAMES HARDIE, Merchant in Kelso, *against* HELEN ALLAN and WALTER CHISHOLM, her present Husband, for his Interest.

No 4.

A person's procurator in an inferior court cannot refer the verity of a point to the other party's oath without a special mandate for that effect.

JAMES HARDIE having charged Helen Allan and her Husband, for payment of L. 30 Scots, contained in a decret obtained at his instance against her before the Sheriff of Berwick; they suspended upon this reason, That though the said decret bears that Helen Allan was personally apprehended, and a procurator marked compearing for her, and producing the copy of the summons given as her mandate; yet the said procurator did so far overact his part, as that the pursuer having offered to prove a promise of payment by the defender's oath, he officiously deferred the same to the pursuer's oath, who thereupon deponed and got decret for what he pleased; which is a palpable nullity in the decret charged on. For it is the constant custom in inferior courts, for a defender's procurator to get first a general mandate to defend, and where any thing is to be deferred to the pursuer's oath, he must have a special procuratory for that effect; it being of dangerous consequence to sustain the copy of a summons as a sufficient mandate to authorise any who are pleased to call themselves procurators before an inferior court, to conclude a person arbitrarily; seeing copies of summonses may be lost, or may fall in the hands of the pursuers or their doers, being left at the dwelling-house with servants, &c.; and perhaps might be procured from the officer who executed the same, if they were to have such an effect.

THE LORDS turned the decret into a libel, because the suspender's procurator had deferred the promise of payment to the charger's oath, without a special mandate for that effect.

Fol. Dic. v. 2. p. 211. Forbes, p. 296.

. Fountainhall reports this case:

JAMES HARDIE, merchant in Kelso, pursues Helen Allan, relict of Johnston of Herlington, and Chisholm, now her spouse, for L. 50 as the price of merchant-ware furnished to her in her first husband's time, and obtains a decret against her before the Sheriff of Berwick; which was suspended on these reasons, That it was truly in absence, and if any goods were furnished to her first