

APPENDIX.

PART I.

MANDATE.

1776. December 10.

MICHAEL NASMITH, Writer to the Signet, Petitioner.

MR. NASMITH the petitioner, happening to be in the town of Paisley some time in the month of November 1771, was informed that one John Jamieson in Auchindennan was confined in Paisley jail, at the instance of Mr. M'Dowal of Castlesemple. The prisoner being an old man, and in very bad health, his son John Jamieson, who had come to Paisley in order to take measures to get his father out of jail, applied for advice to the petitioner. The petitioner, accordingly, undertook the business, and was at the expense of some procedure before the Court of Session, for the purpose of getting old Jamieson liberated. Young Jamieson, in the mean time, had by a private transaction obtained the liberation of his father; and when payment of the account of expenses was afterward demanded by Mr. Nasmith, Jamieson at first sought a delay, and afterward denied that he had employed Mr. Nasmith at all. William Campbell and James Orr, writers in Paisley, were the only witnesses to the transaction betwixt young Jamieson and the petitioner; and Mr. Campbell, although he remembered the meeting, did not remember the particular tenor of the conversation. Upon this account, and as Mr. Orr, the only witness who swore to Mr. Nasmith's being employed by Jamieson, was himself liable to pay the petitioner, as he had managed the business partly for Jamieson, the Lord Auchinleck Ordinary, (19th June 1776) sustained the defences for Jamieson, and assolzied him.

Mr Nasmith gave in a petition to the Court; in which he contended that the question was of very great moment, in point of precedent to practitioners: That when people employed agents in the Court of Session, it was uncommon

No. 1.

Whether a writer suing for his act is bound to produce his client's mandate.

See No. 9. p. 8492.

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 ship-owner 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. 19s. 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.