

1715. June 7.

The Earl of MARCHMONT and MORISON of Prestongrange, *against* HOME of Wedderburn.

No 26.

An advocate's appearance for a defender within the kingdom, is *presumed* to be by mandate; which mandate is *presumed* to continue, though the defender, *pendenti liti*, leave the kingdom.

THE Earl of Marchmont, Prestongrange, and others, being engaged for Wedderburn, and made payment of several sums of money, do pursue him for repayment and relief.

It was *alleged*: That any valuable payment condescended upon, being by Prestongrange, who was out of the country, there could be no further procedure against the defender without a mandate from him.

It was *answered*: That the process *litis contestat*, and Prestongrange having deponed before he went out of the country, the compearance made by his procurator was presumed to be by his mandate; which mandate once given, is presumed to continue.

'Which the LORDS sustained.'

Fol. Dic. v. 1. p. 25. Dalrymple, No 143. p. 198.

1737. July 8.

FRANCIS SCOTT *against* Lord NAPIER.

No 27.

A defender, cited as a haver, not obliged to depone, unless a special condescendence is given in.

Lawyers, agents, &c. called as havers, bound to answer only such interrogatories as are competent to be put to their client.

IN the reduction and improbation betwixt these parties, the defender produced a charter and sasine, sufficient, with forty years possession, to exclude the pursuer; whereupon he took out a diligence in general to prove interruptions; and, having execute it against the defender, 'THE LORDS found he was not bound to de-
'pone, unless a special condescendence was given in of writs called for to be ex-
'hibited.'

Thereafter the pursuer *insisted*, That the Lord Napier's doers and agents should depone, in general, as well as any other havers. To which it was *objected*, That they were not bound to depone otherwise than the defender himself was, they being the same with himself.—At advising whereof, 'THE LORDS found, 'That
'no interrogatories could be put to Lord Napier's lawyers and doers, as to any
'papers they had occasion to see in the course of their employment, but what
'might have been put to my Lord himself.'

The pursuer reclaimed; and set *forth*, That if any of the defender's lawyers, &c. have had imparted to them the knowledge of any particular writing, under confidence not to reveal the same, he was willing they should be excused from deponing upon such writing; but as to those they have seen in the common course of their business, under no particular tie of secrecy, there could be no reason why the pursuer should not have the benefit of their oaths, with respect to such papers, as well as of the party himself. *2do*, Granting the lawyers and agents are not bound to answer to a general interrogatory, as to such writs as they have come to the knowledge of in the course of their employment; yet the pursuer